Supreme Court, U.S.
FILED

93 2071 MAY 2 2 1994

OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1993

PINELLAS COUNTY, FLORIDA,

Petitioner,

v.

CH2M HILL SOUTHEAST, INC.,

Respondent.

Appendix To
Petition For A Writ Of Certiorari
To The District Court of Appeal, Second District, State of Florida

PETITION FOR A WRIT OF CERTIORARI

John T. Allen, Jr.
(Counsel of Record)
Karen E. Maller
John T. Allen, Jr., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273

Counsel for Petitioner

16 pgs

APPENDIX

TABLE OF CONTENTS

APPENDIX A

Opinion of the District Court dated February 2, 1994.....A1

APPENDIX B

Motion for Rehearing Pursuant to Rule 9.330, Florida Rules of Appellate Procedure and for Rehearing En Banc Pursuant to Rule 9.331, Florida Rules of Appellate Procedure.....B1

APPENDIX C

Order of District Court Denying Pinellas County's Motion for Rehearing and Rehearing En Banc.....C1

APPENDIX D

Final Partial Judgment in Favor of CH2M Hill Southeast, Inc.....D1

APPENDIX E

Motion for Rehearing of Final Partial Judgment in Favor of CH2M Hill Southeast, Inc.....E1

APPENDIX F

Order Denying Motion for Rehearing of Final Partial Judgment in Favor of CH2M Hill Southeast, Inc.....F1

APPENDIX G

Opinion of the District Court dated March 13, 1992.....G1

APPENDIX H

Excerpts of the Complaint for Negligence, Breach of Implied Warranty of Fitness for Intended Use, Breach of Implied Warranty of Merchantability, and Strict Liability in Tort.....H1

APPENDIX I

Motion to Dismiss Counts V and VI of Complaint.....I1

APPENDIX J

Order on CH2M Hill Southeast, Inc.'s Motion to Dismiss Counts V and VI of the Complaint.....J1

APPENDIX K

Defendant CH2M Hill Southeast, Inc., Objection to the Pinellas County First Amended Motion for Leave to Amend Complaint.....K1

APPENDIX L

Order Granting Motion of Plaintiff, Pinellas County, to File First Amended Complaint.....L1

APPENDIX M

Excerpts of the First Amended Complaint for Negligence, Breach of Contract, Breach of Implied Warranty of Fitness for Particular Purpose, Breach of Implied Warranty of Merchantability, Strict Liability in Tort, Fraud, and Punitive Damages.....M1

APPENDIX N

Motion to Strike Allegations in Plaintiff's First Amended Complaint.....N1

APPENDIX O

Order on Defendant, CH2M Hill's Motion to Strike Allegations in Plaintiff's First Amended Complaint.....O1

APPENDIX P

Letter from Honorable Fred L. Bryson dated September 26, 1989 Denying Motions for Directed Verdict.....P1

APPENDIX Q

Order Denying Motion to Disqualify.....Q1

APPENDIX R

Order of the District Court Denying CH2M Hill's Petition for Writ of Prohibition.....R1

APPENDIX S

Order of the District Court Denying Madison Management Group's Petition for Writ of Prohibition.....S1

APPENDIX T

Order of the District Court Denying CH2M Hill's Petition for Writ of Prohibition and Denying Pinellas County's Motion to Strike.....T1

APPENDIX U

Order of District Court Denying CH2M Hill's Motion for Rehearing and Rehearing En Banc.....U1

APPENDIX V

Excerpts from Findings of Fact, Conclusions of Law, and Final Judgment for Plaintiff, Pinellas County.....V1

APPENDIX W

Excerpts of the Initial Brief of Appellant, CH2M Hill Southeast, Inc. (First Appeal).....W1

APPENDIX X

Excerpts from Answer Brief of Appellee, Pinellas County, to Initial Brief of Appellant, CH2M Hill (First Appeal).....X1

APPENDIX Y

Excerpts from Reply Brief of Appellant, CH2M Hill (First Appeal).....Y1

APPENDIX Z

Appellant's Initial Brief.....Z1

APPENDIX AA

Excerpts from Appellee's, CH2M Hill, Answer Brief.....AA1

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

PINELLAS COUNTY, FLORIDA,

Appellant,

v.

CH2M HILL SOUTHEAST, INC., CLEVEPAK CORPORATION, MADISON MANAGEMENT GROUP, INC., as successor of INTERSPACE CORPORATION,

Appellees.

CASE NO. 93-01203

Opinion filed February 2, 1994.

Appeal from the Circuit Court for Pinellas County; Howard P. Rives, Judge.

John T. Allen, Jr. of John T. Allen, Jr., P.A., St. Petersburg; Michael J. Keane and Sarah M. Chaves of Baynard, Harrell, Ostow & Ulrich, P.A., St. Petersburg, for Appellant.

Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami; and Benjamin H. Hill, III, of Hill, Ward & Henderson, Tampa, for Appellee, CH2M Hill Southeast, Inc.

PER CURIAM.

Affirmed. *See CH2M Hill Southeast, Inc. v. Pinellas County*, 598 So.2d 85 (Fla. 2d DCA), *rev. denied*, 613 So.2d 7 (Fla. 1992).

FRANK, C.J., and DANAHY and SCHOONOVER, JJ., Concur.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

PINELLAS COUNTY, FLORIDA,

Appellant,

-vs- Appeal No. 93-01203

INTERPACE CORPORATION; CLEVEPAK CORPORATION; MADISON MANAGEMENT GROUP, INC., as successor of INTERPACE CORPORATION; and CH2M HILL SOUTHEAST, INC.,

Appellees.
_____/

MOTION FOR REHEARING PURSUANT TO RULE 9.330, FLORIDA RULES OF APPELLATE PROCEDURE AND FOR REHEARING EN BANC PURSUANT TO RULE 9.331, FLORIDA RULES OF APPELLATE PROCEDURE

PINELLAS COUNTY files this its Motion for Rehearing pursuant to Rule 9.330, Florida Rules of Appellate Procedure and for Rehearing *En Banc* pursuant to Rule 9.331, Florida Rules of Appellate Procedure, directed to the decision of this Court rendered on February 2, 1994, and states:

Petitioner for Rehearing
(Rule 9.330)

Pinellas County respectfully contends that this Court has misapprehended or overlooked certain points of law and fact which are central to the determination of this appeal:

A. The specification sheet submitted by Interpace Corporation to the Engineers, CH2M Hill Southeast, Inc. ("Hill"),

addresses not only Class IV wire — an issue left for retrial in *Hill I* — but also concerns mortar coating, core concrete, steel cylinder, and other critical features of the prestressed concrete pipe design. See Exhibit "A."

B. Just as Hill reviewed the specifications concerning Class IV wire, it reviewed the specifications for each of the other design parameters to ensure conformity to the design of improvements by the Engineers.

C. The Engineers were required to check shop drawings and descriptive data submitted by Interpace to ensure general conformity to the plans and specifications.

D. Hill Engineers undertook to do just that.

E. Further, Hill was required to provide *complete bases* of design, and undertook to do so.

F. In its design work, Hill failed to specify certain optimal checks and balances set forth in AWWA C-301-72 which in turn would have required the manufacturer to conduct certain tests, to submit the results for review and the like.

G. These obligations of the Engineer arose only under its contract in Section A and B.

H. This Court may have been misled by arguments to the effect that Hill had no duties under *Section C* of its contract. The claims which Pinellas County seeks to prosecute *do not* arise under *Section C* of the Hill Contract — only Sections A and B.

I. Hill was paid on the basis of a percentage of the cost of construction — which *included* the cost of the pipe constructed by Interpace.

J. Hill never appealed the contract claims lodged against the Hill Engineers for failure to discharge these aspects of their contract responsibilities.

K. This Court never purported to pass upon such contract claims in its decision in *Hill I*, 598 So.2d 85.

L. Pinellas County has *never* had its day in court concerning its well-pled Hill contract claims — a denial of due process of law.

M. For these reasons, Pinellas County respectfully asserts that this matter should be reheard, reconsidered and remanded for a trial on all contract claims which were pled under Sections A and B of the Hill Contract.

B - 3

Petition for Rehearing En Banc

(Rule 9.331)

The purpose of Rule 9.331, Florida Rules of Appellate Procedure, in part, is to provide a vehicle for district courts of appeal to maintain decisional uniformity within the districts.

The district courts are free to fashion their own notion of decisional uniformity. Express "conflict of decisions," as that term is understood, regarding Supreme Court jurisdiction is not required to trigger a rehearing en banc under Rule 9.331.

The decision of this Court is not uniform or consistent with *Two M Development Corp. v. Mikos*, 578 So.2d 829 (Fla. 2d DCA 1991). Instead, it seriously departs from that decision which enunciates the doctrine of the law of the case in that as the arguments before this Court reflect — Pinellas County, if this decision is allowed to stand, will be deprived of its opportunity to try issues which were never appealed in *Hill I*.

The *Mikos* decision teaches that on remand if issues exist which were never presented for appellate review and never considered — they remain open and are fair game for a subsequent trial.

In the instant situation, numerous contract claims fairly pled by Pinellas County under the Engineer's contract were never made the subject of any brief submitted to this Court in *Hill I* nor were they argued to or decided by this Court. The effect of the affirmance of the Partial Final Judgment is to deprive Pinellas County of its opportunity under the doctrine of the law of the case to try those issues which necessarily have not been resolved.

When this Court in *Hill I* determined to disqualify the sitting trial judge, it was as though no trial occurred in the first instance. Consequently, any issues which required a disposition by the trier of fact had to be necessarily sent back for retrial.

Notwithstanding that clear proposition, the panel of this Court which has affirmed this appeal without opinion has sorely missed the mark and misapplied the *Mikos* decision.

Although a per curiam affirmance by the Court does not create a written opinion which other combatants in the Second District Court of Appeal can compare to the *Mikos* decision and recognize disharmony with it — this case is certainly a high profile

case involving millions of dollars of damage suffered by the water users of Pinellas County. To those who have followed this case, there is plainly a failure of this Court to follow its own decisional law which creates the disharmony which Rule 9.331, Florida Rules of Appellate Procedure, was intended to remedy.

For these reasons, Pinellas County respectfully prays for a rehearing *en banc*.

I express a belief, based on a reason and studied professional judgment, that the panel decision is contrary to *Two M Development Corp. v. Mikos*, 578 So.2d 829 (Fla. 2d DCA 1991) of this Court and that a consideration by the full court is necessary to maintain uniformity of decisions in this Court, namely with:

Two M Development Corp. v. Mikos, 578 So.2d 829 (Fla. 2d DCA 1991)

JOHN T. ALLEN, JR. of
John T. Allen, Jr. P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 832-3273
FBA No. 1284

MICHAEL J. KEANE of
Baynard, Harrell, Ostow & Ulrich, P.A.
Post Office Box 180
St. Petersburg, FL 33731
(813) 823-5000
FBA No. 257516

Attorneys for Pinellas County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to ARTHUR J. ENGLAND, JR., ESQ. and CHARLES M. AUSLANDER, Greenberg, Traurig, Hoffman, Lipoff, etc., 1221 Brickell Avenue, Miami, Florida, 33131-3260; and BENJAMIN H. HILL, III, ESQ., Hill, Ward & Henderson, Post Office Box 2231, Tampa, Florida, 33601, this 16th day of February, 1994.

_____

MICHAEL J. KEANE

Exhibit A to Appendix B

INTERPACE Corporation SPECIFICATION NO. LC-77-1-1

FOR 60" PRESTRESSED CONCRETE EMBEDDED CYLINDER PIPE W/RUBBER & STEEL JOINT (SP-12)
WATER SYSTEM IMPROVEMENTS
PINELLAS COUNTY, FLORIDA
BLACK, CROW & EIDSNESS, INC. - ENGINEERS

SZE DRAWING INTERPACE Engineering Manual, Section 1, Pg. 7, Section 1, Page 9

Nominal Pipe Diameter - inches	60	60
Class Designation	A	A
Approximate Footage - feet	59,435	
Min.Cyl. t - ASTM A-569 (Min. Yield = 27,00 psi); or A-570-72 Gr. B or C; or A-611-72 Gr.C. or E-inch	0.0538	0.0538
Nominal Cylinder Diameter - inches	63	63
Cylinder Test Pressure - psi	43	43
Wire Size - ASTM A 227-71 and A 648-73	#8	#8
Wire Class	IV	IV
Wire Area - sq.in./ft. = (A_s)	0.403	0.437
No. of Wraps of Wire - per ft.	19.56	21.21
Min. Ultimate Wire Strength - psi = (f_{su})	293,000	293,000
Wire Wrapping Stress - psi = (f_{sg})	219,750	219,750
Dynamometer (1 wire) - lbs.	4,530	4,530
($A_s f_{sg}$) = (.75 $A_s f_{su}$) - lbs/lf. (See Note A)	88,559	96,031
Pressure at zero concrete compression - psi	171	178
Resultant Compression in Concrete - psi	1,090	1,330
Min. compressive strength of concrete at time of wrapping (Rodded or Vibrated Cylinders) - psi		

Core Thickness (including cylinder) - inches	4-1/2	3-3/4
Min. Coating Thickness - inches	7/8	7/8
Zinc Coated Joint Rings:		
Spigot Ring Width - inches	6-1/4	4-1/4
Bell Ring - inches x inches	1/4 x 6	
1/4 x 6		
Joint Depth - inches	4-1/4	4-1/4
Creep - feet	0.03	0.03
Average Laid Length - feet	20.03	20.03

Calculation Date: $n_i = 7.0$, $n_r = 6.0$, $R_1 = 0.05$, $R_2 = 0.05$, $C_r = 2.00$

Design Conditions:
In Accordance with AWWA Specification C301-72

Design Pressure - psi	150	150
Water Hammer Allowance - psi	60	60
Max. Cover - feet	6	6

NOTES: 1. All bevels and outlet pipe to be manufactured with 4-1/2" core.

2. For details on special fittings see Specification Sheet LC- 77-1-4 and 5.

3. BELL BOLT Joints to be manufactured with 4-1/2" core.

NOTE A: Should material shortages require use of alternate size or strength wire, wire area, No. of wraps, wrapping stress and Dynamometer values will be varied as required to maintain the value of (Asfsq) as shown.

LJ06012160 LJ06012170

COMPILED____CHECKED____APPROVED____DATE____

APPENDIX C

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

MARCH 24, 1994

PINELLAS COUNTY, FLORIDA, Appellant(s), v. INTERPACE CORPORATION, et al., Appellee(s)	)	Case No. 93-01203

BY ORDER OF THE COURT:

Counsel for the appellant, having filed a motion for rehearing and rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c: Michael J. Keane, Esq.
John T. Allen, Jr., Esq.
Benjamin H. Hill, III, Esq.
Arthur J. England, Jr., Esq.
Charles M. Auslander, Esq.

/JM

APPENDIX D

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY, CIVIL DIVISION

PINELLAS COUNTY, FLORIDA

Plaintiff,

vs. CASE NO.: 83-13313-7

INTERPACE CORPORATION;
CLEVEPAK CORPORATION;
MADISON MANAGEMENT GROUP, INC., AS SUCCESSORS OF INTERPACE CORPORATION; AND
CH2M HILL SOUTHEAST, INC.,

Defendants.
_____/

FINAL PARTIAL JUDGMENT IN FAVOR OF CH2M HILL SOUTHEAST, INC.

Pursuant to the Appellate Court opinion rendered in this action

IT IS ADJUDGED that the Plaintiff, PINELLAS COUNTY, take nothing by this action with respect to all claims and issues save one, and that the Defendant, CH2M HILL, go hence without day as to all claims and issues save the one specified herein. The issue excluded from this judgment is the issue remanded to the trial court, which arises from Pinellas County's allegations that CH2M HILL breached its contractual design responsibilities by allowing the pipe manufacturer to use Class IV wire for the pipeline. The Court hereby reserves jurisdiction to determine the amount of taxable costs to be awarded to CH2M HILL.

ORDERED in St. Petersburg, Florida, on March 3, 1993.

_____

Judge

KARLEEN F. DEBLAKER, CLERK
RECORD VERIFIED BY: as

APPENDIX E

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

CIRCUIT CIVIL NO. 83-13313-07

PINELLAS COUNTY,

Plaintiff,

-vs-

INTERPACE CORPORATION,
CLEVEPAK CORPORATION, and
MADISON MANAGEMENT GROUP, INC.,
as successor of INTERPACE
CORPORATION, and CH2M HILL
SOUTHEAST, INC.,

Defendants.
_____/

MOTION FOR REHEARING OF FINAL PARTIAL JUDGMENT IN FAVOR OF CH2M HILL SOUTHEAST, INC.

Plaintiff, PINELLAS COUNTY, FLORIDA, moves for rehearing of the Final Partial Judgment in Favor of CH2M HILL SOUTHEAST, INC. entered March 5, 1993 on the following grounds:

1. The Final Partial Judgment is a judgment in favor of Defendant, CH2M HILL SOUTHEAST, INC. ("HILL"), on *all* breach of contract claims brought by Plaintiff, PINELLAS COUNTY, against HILL except for the issue of whether HILL breached the contract by allowing the manufacturer to use Class IV wire.

2. In its First Amended Complaint, PINELLAS COUNTY alleged that HILL was responsible for numerous breaches of its contract, not just the allowance of Class IV wire. The Final

Judgment entered after the non-jury trial was a judgment for Plaintiff on *all* alleged breaches, not just the issue of Class IV wire.

3. HILL did not appeal most of the breaches of contract for which the trial judge entered a judgment against HILL. Concerning breaches of contract, HILL's appeal was limited to its duty to inspect the manufacture of pipe segments, whether the doctrine of merger imposed on HILL a duty under PINELLAS COUNTY'S contract with the pipe manufacturer, and whether HILL breached its duty by allowing the pipe manufacturer to use Class IV wire. None of the other numerous contractual breaches alleged by PINELLAS COUNTY and found by the trial court was considered by the Second District Court of Appeal.

4. In its opinion, the Second District ruled that as a matter of law HILL had no duty to inspect the manufacture of the pipe, was not responsible for duties imposed by the manufacturing contract with PINELLAS COUNTY, and remanded the case for a new trial concerning breach of duty by allowing the pipe manufacturer to use Class IV wire.

5. Further, by finding that Judge Bryson should have been disqualified, the Court rejected all factual findings and for that matter negated the entire trial.

6. The Final Partial Judgment denies PINELLAS COUNTY due process concerning the other contractual breaches alleged in the Complaint because it purports to enter judgment for HILL on all alleged contractual breaches even those on which PINELLAS COUNTY has now never had a trial on any of those issues.

7. The Partial Final Judgment violates PINELLAS COUNTY'S due process rights guaranteed by the Florida and United States Constitutions in that it denies PINELLAS COUNTY an opportunity to be heard on the contractual breaches not considered by the Second District Court of Appeal.

8. The Partial Final Judgment denies PINELLAS COUNTY its fundamental right first to a trial and later to appellate review thereby denying PINELLAS COUNTY access to the courts.

9. For the reasons stated above, PINELLAS COUNTY moves for a rehearing of the Final Partial Judgment.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to JOHN T. ALLEN, JR., ESQ., 4508 Central Avenue, St. Petersburg, Florida, 33711; and

DAVID T. KNIGHT, ESQ., Post Office Box 2231, Tampa, Florida, 33601 this 15th day of March, 1993.

MICHAEL J. KEANE of
BAYNARD, HARRELL, MASCARA,
OSTOW & ULRICH, P.A.
Post Office Box 180
St. Petersburg, FL 33731
(813) 823-5000
SPN NO. 00176393
FBA NO. 257516
Attorney for Plaintiff

APPENDIX F

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
Circuit Civil, Case No. 83-13313-07

PINELLAS COUNTY,

Plaintiff,

vs.

INTERPACE CORPORATION,
CLEVEPAK CORPORATION, and
MADISON MANAGEMENT GROUP, INC.,
as successors of INTERPACE
CORPORATION, and CH2M HILL
SOUTHEAST, INC.,

Defendants.
_____/

ORDER DENYING MOTION FOR REHEARING

THIS CAUSE having come before the Court upon the Plaintiff's Motion for Rehearing of Final Partial Judgment in Favor of CH2M Hill Southeast, Inc., entered March 3, 1993, and the Court having reviewed the Motion along with its order granting final partial judgment in favor of CH2M Hill Southeast, Inc., and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Motion for Rehearing of Final Partial Judgment in Favor of CH2M Hill Southeast, Inc. is DENIED.

DONE AND ORDERED in Chambers, St. Petersburg, Pinellas County, Florida, this 25th day of March, 1993.

_____
Howard P. Rives
Circuit Judge

Copies furnished to:
John T. Allen, Esq.
David T. Knight, Esq.
Michael J. Keane, Esq.

APPENDIX G

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CH2M HILL SOUTHEAST, INC., and MADISON MANAGEMENT GROUP, INC., Appellants,	)	
v.	)	Case Nos. 90-02027
	)	90-02028
PINELLAS COUNTY, FLORIDA,	)	90-03562
	)	90-03563
Appellee.	)	
	)	CONSOLIDATED

Opinion filed March 13, 1992.

Appeals from the Circuit Court for Pinellas County; Fred L. Bryson, Judge.

Stephen M. Bull and Guy S. Haggard of Bull & Haggard, Orlando; and Arthur J. England, Jr., Linda Ann Wells, and Charles M. Auslander of Fine Jacobson Schwartz Nash Block & England, Miami, for Appellant CH2M Hill Southeast, Inc.

Jeffrey S. O'Brien of Masterson,

Rogers, Patterson, Masterson, O'Brien & Lopez, P.A., St. Petersburg; and G. Lee Garrett, Jr. and Stephen O. Kinnard of Jones, Day, Reavis & Pogue, Atlanta, for Appellant Madison Management Group, Inc.

John T. Allen, Jr., of John T. Allen, Jr., P.A., St. Petersburg; Michael J. Keane of Baynard, Harrell, Mascara, Ostow & Ulrich, P.A., St. Petersburg; and Alan C. Sundberg and Sylvia H. Walbolt of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tampa, for Appellee Pinellas County.

DANAHY, Acting Chief Judge.

The appellant CH2M Hill Southeast, Inc., (Hill) is the successor to Black, Crow & Eidsness, Inc., which was the design engineer for a water distribution pipeline running 13.5 miles from the Pasco-Pinellas County line into Pinellas County and described by Pinellas County as the heart of its water system. The appellant Madison Management Group, Inc., (MMG) is the successor to Interpace Corporation, which manufactured the pipeline segments. Each appellant separately appeals from a final judgment awarding compensatory damages of 19.8 million dollars against them and in favor of Pinellas County, and 5 million dollars in punitive damages against MMG, based on a determination by the trial judge as trier of fact that the pipeline is defective and must be completely replaced. For the reasons stated in this opinion, we reverse the final judgment, vacate the cost award, and remand for a new trial.

On March 24, 1975, Hill's predecessor entered into a contract with Pinellas County to perform specified engineering services in connection with the design of the pipeline which is the subject of this litigation (the "Hill Contract"). The pipeline was to consist of 3,400 pipe segments, each approximately 20 feet in length. The pipe segments were to be made with a concrete inner

core, steel cylinder, concrete outer core wrapped with high-strength wire, and covered with slurry and mortar coatings. For its design of the pipeline, Hill's predecessor was paid a fee of $364,939.27.

On February 25, 1977, MMG's predecessor, Interpace, formally executed a contract with the County to manufacture the pipeline segments (the "Interpace Contract"). Hill was not a signatory nor a party to this contract. The contract was awarded to Interpace as the lowest responsive bidder on the project. Throughout the summer of 1978, Interpace manufactured the pipeline segments at its Lacoochee, Florida, plant. The pipeline segments were delivered by truck to the job site and installed. On October 2, 1978, the County accepted the pipeline, and it began operation.

Over time, the County became convinced that at least some of the pipeline segments were defective and that the integrity of the entire pipeline was in doubt. In November 1983 the County filed this damage action against Hill and MMG. The nonjury trial began in January of 1989 and ended in January of 1990, producing a trial transcript of more than 14,000 pages. The record on appeal is contained in 265 volumes with an index of 437 pages, and the final judgment is 200 pages long.

We appreciate and are sensitive to the great amount of judicial labor required in a nonjury trial of such length involving complicated issues. We are also aware of the significance of this case and its outcome to the residents of Pinellas County. Notwithstanding, for the reasons set forth below and based upon the analysis undertaken in this opinion, we are constrained to reverse because of trial events which occurred in October of 1989. We cannot ignore the wealth of settled law commanding the result we reach in this matter.

On September 20, 1989, the County had completed presentation of its case in chief and Hill had presented its case. When proceedings resumed on October 10, Stephen Schooley, a younger member of Hill's trial team, presented a lengthy written motion by Hill to disqualify the trial judge. At his request, Mr. Schooley was allowed to present the motion "in open court," and he proceeded to review its allegations. He stated that the grounds for the motion arose from the trial judge's conduct throughout the trial, which cumulatively convinced Hill, the client, that the trial judge was biased in favor of the County. Mr. Schooley's presentation con-

sumed 22 pages of the trial transcript. At its conclusion, the trial judge said to Mr. Schooley that the motion involved matters which "exceed the duties and boundaries and parameters of advocacy, but go into another area which I will charitably not describe."

The trial judge then invited MMG to join in the motion, and MMG did in fact file a similar motion to disqualify. The trial judge said he had no intention of "ruling on it today." He stated that he would hear counsel for the County in argument on the motion. The proceedings on October 10 concluded with these remarks from the trial judge:

> It reminds me of a story, this motion does, and the framework of this case, of—two days before Christmas, a good samaritan was walking home in the snow. In his arm were two sacks—arms were two sacks of groceries, and in one sack was a ham.
>
> A fellow that was down on his luck came out of the alley and said, "Sir, would you give me something to eat? I'm hungry." The good samaritan gave him the hamhock from the ham.
>
> And the next night, the good samaritan's walking down the same place. It's dark and in the snow. And the fellow he'd given the ham to, by that time, had eaten all the ham and thought that, within his province, whatever he was doing, it would be appropriate to attempt to rob the good samaritan with the hamhock.

When proceedings resumed the next morning, the trial judge told Mr. Schooley that he would afford him the opportunity to withdraw the motion to disqualify. Mr. Schooley declined on behalf of Hill and suggested that the trial judge was not permitted to proceed further with respect to the disqualification issue. The trial judge said, however, that he was going to hear counsel for the County on the matter. He told Mr. Schooley:

> Many years ago, someone told me that there were basically two types of untruths; lies and damn lies. But you, sir, in your motion, have crystallized yet a third one.

> And up to this point, it was a peephole, and now it's a broad horizon. And that is, quoting out of context.
>
> You, sir, in your motion, have taken liberties with the truth that a common cur would not take with a street-side fireplug.

Five days later, on October 16, counsel for the County presented arguments against the motions to disqualify, arguments which consumed almost 100 pages of the trial transcript. The trial judge denied the motions.

Section 38.10, Florida Statutes (1989), and Florida Rule of Civil Procedure 1.432 govern disqualification of a trial judge. Both the statute and the rule are clear that upon presentation to the trial judge of a legally sufficient motion by a party to disqualify, the trial judge *shall proceed no further*. The trial judge may not debate the allegations contained in the motion, pass on the truth of its allegations, or adjudicate the question of disqualification. *See Townsend v. State*, 564 So.2d 594 (Fla. 2d DCA 1990). The trial judge's actions in this case exceeded the proper scope of his inquiry. It was error for him to continue in the case and a new trial is required.

We hold further that Hill is entitled to judgment as a matter of law on all issues save one, and the new trial as to Hill shall be limited to the one issue dealt with below.

The County asserted claims against Hill based on tort liability and liability for breach of contract. It is a well established rule in Florida that tort damages are not recoverable in a breach of contract action, absent an accompanying independent tort. *Lewis v. Guthartz*, 428 So.2d 222 (Fla. 1982). To have an actionable tort claim in a breach of contract case, there must be appropriate pleadings and proof of conduct resulting in personal injury or property damage beyond the breach of the contract. *J. Allen, Inc. v. Humana of Florida, Inc.*, 571 So.2d 565 (Fla. 2d DCA 1990). A plaintiff may not recover damages on a theory of liability not pled. *Lee County Bank v. Winson*, 444 So.2d 459 (Fla. 2d DCA 1983). In this case the County failed to plead an independent tort separate from its breach of contract claim against Hill.

In Count IX of its amended complaint titled "Negligence Against CH2M Hill Southeast, Inc.," the County alleged:

> 66. The Defendant, CH2M HILL SOUTHEAST, INC., carelessly and negligently performed its duties owed to the Plaintiff, PINELLAS COUNTY, under their contract, Plaintiff's Exhibit "B," in the following manner:

In Count X titled "Breach of Contract of CH2M Hill Southeast, Inc.," the County alleged:

> 70. The Defendant, CH2M HILL SOUTHEAST, INC., breached its contract with the Plaintiff, PINELLAS COUNTY, in the manner described in Paragraph 66.

Thus, the County itself characterized Hill's "negligence" in the performance of the contract as in fact constituting the breach of the contract. The County argues that Hill waived any deficiency in the pleadings because it never objected at trial to the County's reference to statutes and regulations, upon which the County bases its tort theories, as being beyond the scope of the pleadings. We disagree. Because the County failed to plead a separate and independent tort, it is foreclosed from recovery in this action against Hill on any tort theory of liability.

With respect to the breach of contract claim, it was the position of the County that Hill had the contractual responsibility to oversee the manufacture of the pipeline segments. The County argued that the Hill Contract imposed such duties on Hill. Our reading of the Hill Contract, a function wholly within our scope of review, *Folwell v. Bernard*, 477 So.2d 1060 (Fla. 2d DCA 1985), has led us to the opposite conclusion. We find no provision in that contract which imposed upon Hill a responsibility with respect to the pipe manufacturing process.

But the County further argues that responsibilities for the pipe manufacturing process were imposed upon Hill in the Interpace Contract, even though Hill was neither a party nor a signatory to that contract. The County reaches this conclusion based on application of the doctrine of contract merger. In support of its argument, the County cites two cases: *J.M. Montgomery Roofing Co. v. Fred Howland, Inc.*, 98 So.2d 484 (Fla. 1957), and *Northwestern Bank v. Cortner*, 275 So.2d 317 (Fla. 2d DCA 1973). Each of these cases applied the doctrine of merger to allow two contracts to be read together. The contracts in each case were closely related in

time. But in neither case did the court impose contract obligations under the second contract on a party to the first contract who was not also a party or a signatory to the second contract. It remains the rule in Florida that ordinarily a contract cannot bind one who is not a party thereto or had not in some fashion agreed to accept its terms. To create a valid contract there must be reciprocal assent to a certain and definite proposition. *In re Estate of Donner*, 364 So.2d 742 (Fla. 3d DCA 1978). No responsibilities contained in the Interpace Contract could be imposed upon Hill by "merger" of the Interpace Contract and the Hill Contract.

Additionally, the County asserted that Hill had breached its contractual design responsibilities by allowing the pipe manufacturer to use class IV wire for the pipeline. That is an issue of fact which must be determined in a new trial.

Finally, we have *sua sponte* consolidated the instant matter with Case Nos. 90-03562 and 90-03563 for decisional purposes. Thus, in light of our determination to reverse and remand this proceeding for a new trial, we vacate the cost award challenged by MMG and Hill in Case Nos. 90-03562 and 90-03563.

Reversed and remanded for new trial in accordance with this opinion.

CAMPBELL and FRANK, JJ., Concur.

APPENDIX H

Excerpts of the Complaint for Negligence, Breach of Implied Warranty of Fitness for Intended Use, Breach of Implied Warranty of Merchantability, and Strict Liability in Tort

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL NO. 83-13313-12

PINELLAS COUNTY, a political subdivision of the State of Florida,

Plaintiff,

vs.

INTERPACE CORPORATION, a foreign corporation; GHA LOCK JOINT, INC., a foreign corporation; CH2M HILL SOUTHEAST, INC., a Florida corporation formerly known as Black, Crow and Eidsness, Inc., a Florida corporation; BUMBY & STIMPSON, INC., a Florida corporation, and SUWANNEE TRANSFER, INC., a Florida corporation,

Defendants.
_____/

COMPLAINT FOR NEGLIGENCE, BREACH OF IMPLIED WARRANTY OF FITNESS FOR INTENDED USE, BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, AND STRICT LIABILITY IN TORT

The plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the defendants, INTERPACE CORPORATION, a foreign corporation, and GHA LOCK JOINT, INC., a foreign corporation, and avers:

COUNT I
NEGLIGENCE

1. At all times material to this complaint, the plaintiff, PINELLAS COUNTY, is a political subdivision of the State of Florida.

2. At all times material to this complaint, INTERPACE CORPORATION is a foreign corporation organized and existing under the laws of the State of Deleware who is authorized to do business in the State of Florida.

3. At all times material to this complaint, GHA LOCK JOINT, INC., is a foreign corporation organized and existing under the laws of the State of Deleware who is qualified to do business in the State of Florida.

4. In March of 1975, the plaintiff, PINELLAS COUNTY, executed an agreement with the consultant engineer, Black, Crow and Eidsness, Inc., for the design of a transmission main and selection of a route from the point of termination of the Cypress Creek transmission main which is located at the Pasco-Pinellas County line to the North Booster Station located on U.S. 19 north of S.R. 580. In February of 1977, PINELLAS COUNTY executed a contract with INTERPACE CORPORATION for the furnishing of approximately 63,400 linear feet of prestressed concrete pipe 60-inches in diameter and 8,160 linear feet of prestressed concrete pipe 54-inches in diameter together with other fittings and specials. On March 15, 1977, the County executed a contract with BUMBY & STIMPSON, INC. for the installation of the 60-inch diameter and 54-inch diameter transmission mains together with fittings and other specials, large butterfly valves, magnetic meters and other appurtenances which had been purchased by the County and for the furnished and installation of other materials, fittings and appurtenances necessary for the operation of the completed transmission mains. All parties to the bid and in fact all defendants named in this complaint knew before entering into any obligation by said defendants in relation to said transmission lines that both the 54-inch diameter and in particular the 60-inch diameter transmission line, described above, would constitute the heart of the Pinellas County Water System and would supply water to all retail customers of the Pinellas County Water System and five wholesale customers of the Pinellas County Water System who are Pasco County and four municipalities located within Pinellas County. Said transmission lines were to be utilized and are being utilized at the present time to receive water from the County's Cypress Creek Wellfield and the County's Cross Bar Ranch Wellfield located in Pasco County.

5. All defendants knew or should have known that said pipelines were to be the most critical transmission line in the entire

Pinellas County Water System which, after construction, could not be taken out of service except under extreme unusual conditions and for short periods of time during the rainy season or the winter months. So critical is the utilization of said transmission lines that without their existence or should their use be disrupted for any reasonable period of time, a water emergency or water crisis would have to be declared in Pinellas County which would result in water rationing.

6. As a result of the need for said transmission lines, the plaintiff, PINELLAS COUNTY, contracted in Pinellas County with the following named defendants for the following indicated services for the design, creation of specifications, manufacture and installation of said transmission lines:

(A) To defendant, INTERPACE CORPORATION, a contract for the manufacture of the 60-inch diameter and 54-inch diameter transmission pipe sections which were to be installed into the transmission pipelines, said contract being executed on the 25th day of February, 1977, wherein the defendant, INTERPACE CORPORATION, was to supply through its Lock Joint Products Division pipeline sections for construction of the pipelines. A copy of the material portions of the contract documents is attached to this complaint together with the appropriate bid and bidding information accepted by the defendant, INTERPACE CORPORATION, as plaintiff's Exhibit A.

(B) To defendant, CH2M HILL SOUTHEAST, INC., who was known by the name of Black, Crow & Eidsness, Inc. at the time of the execution of a contract dated the 24th day of March, 1975, between PINELLAS COUNTY and Black, Crow & Eidsness, Inc. for Black, Crow & Eidsness, Inc. to act as the County's consulting engineers wherein Black, Crow & Eidsness, Inc. was to provide, among other duties, route selection survey, selection of the choice of materials to be specified for the component parts of the pipeline, the investigation of the above-ground and below-ground chemical, physical, soil, groundwater, and electrical conditions and their potential effects on the materials selected for the component parts of the pipeline, to provide the final design and construction plans and specifications for the project, provide consultation and advise as to the necessity of providing or obtaining other services such as laboratory testing and inspection of samples or materials and special consultations, and to provide construction supervision such as

visiting the construction site on an average of four (4) times per month to protect the owner against defects and deficiencies in the work of the contractor, and to check shop drawings and descriptive data as to the general conformity to the plans and specifications of the project, and to require special examination or testing of the work and recommend final acceptance of the work. A copy of said contract is attached to this complaint as plaintiff's Exhibit B.

(C) To BUMBY AND STIMPSON, INC., a contract dated the 15th day of March, 1977, for the installation of the pipeline and appurtenances necessary for the complete operation of the facility. A copy of the material portion of the contract is attached to this complaint as plaintiff's Exhibit C.

(D) To SUWANNEE TRANSFER, INC., a subcontract from BUMBY AND STIMPSON, INC. for the delivery of the pipe from the manufacturer to the construction site of the pipelines. Plaintiff does not have a copy of the subcontract but alleges that the original is in the possession of said defendant.

7. Thereafter, the defendant, INTERPACE CORPORATION, through its Lock Joint Products Division, pursuant to the plans and specifications designed and written by the defendant, CH2M HILL SOUTHEAST, INC., as more particularly described in plaintiff's Exhibit A, commenced construction of the pipe sections, fittings and other specials which, when fitted together, would constitute the 60-inch diameter and 54-inch diameter pipelines.

8. Throughout the period from approximately the 25th day of February, 1977, to the 2nd day of October, 1978, the defendant, INTERPACE CORPORATION, designed and manufactured sections of the 60-inch diameter and 54-inch diameter pipes, pipe fittings and specials, which were delivered to the respective construction areas and installed in the ground by the defendant, BUMBY AND STIMPSON, INC. The said 60-inch diameter pipeline, when completed, consisted of approximately 12 miles of pipeline or 63,400 feet of pipe. The 54-inch diameter pipeline consists of approximately 1.5 miles of pipeline or 8,160 feet of pipe.

9. The additional importance of the 54-inch diameter pipeline is that it commences at the Pasco County line and runs near the S.K. Keller Pumping Station. It is accompanied in parallel fashion by a 42-inch diameter pipeline both of which empty into the 60-inch diameter pipeline described herein near the S.K. Keller Pumping Station. The 42-inch diameter pipeline and the 54-inch

diameter pipeline serve to bring all of the needed potable water for human consumption to PINELLAS COUNTY from neighboring Pasco County to the North.

10. On the 2nd day of October, 1978, the 60-inch diameter pipeline was completed and put into service and on the 2nd day of October, 1978, the 54-inch diameter pipeline was completed and placed into service.

11. Thereafter, the plaintiff, PINELLAS COUNTY, utilized the 60-inch diameter pipeline and the 54-inch diameter pipeline for the supply of potable water to its retail and wholesale customers of the Pinellas County Water System. On November 13, 1979, in the area of a community known as East Lake Woodlands, a section of the 60-inch diameter pipeline exploded and ruptured causing the opening of a gigantic hole in the area of the pipeline rendering a section of the 60-inch diameter pipeline totally unusable. As the result of this pipeline failure, the plaintiff, PINELLAS COUNTY, embarked upon an extensive investigation to determine the cause of the pipeline failure.

12. Thereafter, commencing on the 19th day of November, 1979, the plaintiff, through its consulting engineers, Jones, Edmunds and Associates, Inc., have conducted an extensive investigation into the design and manufacture and installation of both the 60-inch diameter and 54-inch diameter transmission lines. This inspection resulted in the additional finding of sections of pipelines which were faulty in design, failed to meet specifications for the construction of the pipeline, were the result of faulty manufacturing techniques, all of which have resulted in the determination by the plaintiff that both the 60-inch diameter and 54-inch diameter transmission lines are undependable and riddled with defective pipe, which will result in periodic and frequent failures of numerous and various sections of pipeline in the future to the point that said pipeline needs to be totally replaced at a cost in excess of Sixteen Million Dollars.

13. The defendant, INTERPACE CORPORATION, carelessly and negligently designed, manufactured and produced the 60-inch diameter and 54-inch diameter pipes, pipe fittings and specials and negligently and carelessly fell below the standards commensurate in the industry for the design and manufacture of pipes, pipe fittings and specials in the following respects:

(A) The material parameters used in the design of the pipes were different from and superior to the characteristics of the materials used to fabricate the pipe or, in other words, the materials utilized in the manufacture of the pipe did not meet the design assumptions in that:

(1) The modulus of elasticity of the concrete at the time the pipes were prestressed was less than that assumed in the design;

(2) The final modulus of elasticity of the concrete used in the design to calculate the creep loss in the concrete was higher than the final modulus of elasticity of the concrete used in the fabrication of the pipe;

(3) The combined modulus of elasticity of the steel cylinder and prestressed wires used in the fabrication of the pipe was higher than the combined modulus assumed in the design; and

(4) The creep of the concrete used in the fabrication of the pipe exceeded the concrete creep assumed in the design of the pipe.

As a direct and proximate result of the use of the incorrect parameters in the design, the defendant, INTERPACE CORPORATION, provided to the plaintiff, PINELLAS COUNTY, pipe which was lower in strength, lower in working pressure, and had less safety factor than represented by the manufacturer, INTERPACE CORPORATION, and required by the specifications for the manufacture of the pipe as specified in plaintiff's Exhibit A.

(B) The concrete materials used in the fabrication of the pipe did not meet the specification requirements as contained in plaintiff's Exhibit A in that:

(1) The fine aggregate incorporated in the concrete core and the mortar coating over the prestressed wires was more finely graded than permitted by the specification limits (AWWA-301-72);

(2) The coarse aggregate incorporated in the concrete contained deleterious substances in the form of minus 200 mesh sieve material, soft particles, clay lumps, and the combination thereof; and

(3) Chemical admixtures were used in the concrete without the permission or knowledge of the purchaser, PINELLAS COUNTY, as required by the specifications. The type

of admixture and quantity used was changed without notifying the purchaser, PINELLAS COUNTY.

As a direct and proximate result of the carelessness and negligence of the defendant, INTERPACE CORPORATION, as hereinabove alleged, through the use of nonconforming materials, the concrete used in the fabrication of the pipe did not possess the qualities deemed essential and required by the specifications to insure adequate performance and durability of the pipe. The use of the admixtures to attempt to compensate for the deficiencies of the materials and procedures used was hidden from the purchaser, PINELLAS COUNTY, contrary to the requirements of the contract between the plaintiff, PINELLAS COUNTY, and the defendant, INTERPACE CORPORATION.

(C) The quality of the prestressing wire used to fabricate the pipe did not meet the requirements of the project specifications as contained in plaintiff's Exhibit A. Prestressing wire generally used throughout manufacture of the pipe was of a strength and quality not recognized or recommended by any national standards, organization or published specification. Said prestressing wire was manufactured and used solely to obtain a cost advantage over competitors. The wire, however, was overdrawn and was grossly defective in that it was susceptible to stress corrosion, resulting in embrittlement, splitting, pitting, and failure in the environment in which it was known that it was going to be exposed and placed into service. Consequently, the safety factor against failure is being continuously reduced rendering the pipeline unreliable and a hazard to the community and surrounding areas where it is located.

(D) The procedures used to manufacture the pipe were not in accordance with the requirements of the specifications contained in plaintiff's Exhibit A in that:

(1) Pipe cores were not cured as specified in the AWWA C301-72 standard. Cores were "tipped" from their bases and removed to a storage yard prior to 32 hours age. Water spraying was haphazard and only portions of the cores were kept moist for the required curing period;

(2) Water curing of the mortar coating was not maintained for four (4) days as required by the specifications (AWWA C301-72). Pipes were prematurely removed from curing and stored in an open yard subject to drying and shrinkage;

(3) The minimum clear distance between prestress wires was not maintained at all times resulting in adjacent wires touching which created voids which could not be filled with protective slurry or mortar;

(4) Defective concrete and mortar were not removed to the extent necessary to ensure the quality of the pipe;

(5) Repairs were made to the pipe using materials having different constituents, consistencies, and qualities from those required by the specifications contained in plaintiff's Exhibit A; and

(6) Work was not performed in a workmanlike manner by properly trained employees and mechanics skilled in their trade.

As a direct and proximate result of the carelessness and negligence of the defendant, INTERPACE CORPORATION, as hereinabove alleged, and because of the deficiencies hereinabove alleged, the concrete and pipe produced were of variable and uncertain quality resulting in imperfections and weak areas in unknown locations subject to deterioration, excessive stresses, and reduced safety factors.

(E) The equipment used to fabricate the pipe was not properly maintained or prepared for use. In addition, the defendant was careless and negligent in that:

(1) Welding rods used to fabricate the steel cylinders were not maintained in adequately heated dry storage as recommended by the rod manufacturer to ensure satisfactory welds;

(2) Molds were not thoroughly cleaned before each use as required by the specification resulting in imperfect concrete surfaces with numerous voids;

(3) Molds were not properly assembled and sealed which produced cores that have irregularities and offsets in the surface at the mold gates, variable wall thickness, thin on one side and eccentrically positioned cylinders within the core, resulting in stresses within the pipe greater than those for which it was designed;

(4) Application of the cement slurry prior to coating the prestress wire was erratic resulting in areas of unknown location throughout the pipeline which are highly susceptible to corrosion of the prestress wires and subsequent reduc-

tion in the safety factor of the pipeline and possible ultimate failure.

As a direct and proximate result of the carelessness and negligence of the defendant, INTERPACE CORPORATION, as hereinabove alleged, and as a consequence of the above-described deficiencies, the pipeline was supplied with less strength, capacity, and durability than required by the specifications as contained in plaintiff's Exhibit A.

(F) The quality control exercised during production of the pipe was inadequate to ensure pipes were produced in accordance with the specification requirements. As a result of these actions, the defendant was careless and negligent in the following additional respects:

(1) The personnel conducting the quality control tests required by the specifications were not qualified or adequately trained;

(2) The quality control tests performed were not made in accordance with the ASTM methods cited in the specifications as required by plaintiff's Exhibit A;

(3) Inadequate personnel were employed to assure product conformance with the specifications in all respects; and

(4) The quality control program used was inadequate to ensure that pipes conforming to the specifications or that pipes undamaged during the manufacturing process were supplied.

As a direct and proximate result of the carelessness and negligence of the defendant, INTERPACE CORPORATION, as hereinabove described, the above-described deficiencies resulted in numerous pipes being supplied which did not conform to the specification requirements and had imperfections making them susceptible to deterioration and corrosion of the prestressed wires leading ultimately to failure.

(G) The field repairs conducted by the defendant, INTERPACE CORPORATION, of damaged pipe were made under the supervision of the manufacturer's representative and were not adequate to prevent corrosion of the prestress wire.

14. Properly manufactured pipe which was to be delivered by the defendant, INTERPACE CORPORATION, to the plaintiff, PINELLAS COUNTY, would be expected to last for a minimum of

80 years and in fact, depending upon conditions, if properly designed and manufactured, almost indefinitely. The pipe and as a result the pipelines, namely the 60-inch diameter and 54-inch diameter transmission lines, designed and manufactured by the defendant are inherently defective with defects as hereinabove alleged which were latent and undiscoverable by the plaintiff, PINELLAS COUNTY, unless the pipe itself was inspected through destruction of the pipe thus rendering it useless for service in the pipeline. As the result of the construction, design, and manufacture of the above-described latent defects, the plaintiff, PINELLAS COUNTY, was unaware of the existence of said latent defects until, through its lengthy and scientific investigation, the determination and existence of said latent defects in its transmission lines became known to the plaintiff on September 3, 1980, when at said time, the plaintiff placed the defendant, INTERPACE CORPORATION, on notice of its responsibilities for furnishing the plaintiff defective pipelines. Said latent defects were not discoverable through reasonable diligence of the plaintiff, PINELLAS COUNTY, until said date because said latent defects could only be discovered by destruction of the pipe itself. As hereinabove alleged, the pipeline is an indispensable and main artery of the Pinellas County Water System and cannot be taken out of service for any substantial length of time which resulted in the plaintiff being required to only periodically examine sections of the pipeline during the rainy season when service could be temporarily interrupted through said pipelines.

15. On or about July 2, 1981, defendant, GHA LOCK JOINT, INC., a wholly owned subsidiary of Gifford Hill American, Inc., purchased the domestic assets of Lock Joint Products Division of INTERPACE CORPORATION. During the prepurchase evaluation of the Lock Joint Division of Interpace, Gifford Hill American, Inc. became aware of pipe failure problems experienced by Interpace customers. As a result, defendant, GHA LOCK JOINT, INC., through contractual obligations with the defendant, INTERPACE CORPORATION, assumed the first $200,000.00 of expense where there were individual Interpace pipe breaks due to the fault of the pipe and on Interpace pipeline sections which were determined to be in need of replacement due to the fault of the pipe. The plaintiff, PINELLAS COUNTY, alleges the existence of said contractual obligation and the assumption by the defendant, GHA LOCK JOINT, INC., of said liability but does not have a copy of

said contract and alleges that the contract is in the possession of the defendant, GHA LOCK JOINT, INC., and defendant, INTERPACE CORPORATION. In the alternative, the plaintiff alleges that GHA LOCK JOINT, INC. contractually assumed the entire responsibility for any defective pipe produced by INTERPACE CORPORATION through its purchase of the Lock Joint Division of defendant, INTERPACE CORPORATION. As a direct result of said assumption of liability, the defendant, GHA LOCK JOINT, INC., is liable to the plaintiff, PINELLAS COUNTY, in the sum of $200,000.00 or in the alternative for all damages claimed by the plaintiff herein.

16. As a direct and proximate result of the carelessness and negligence of the defendants, INTERPACE CORPORATION and GHA LOCK JOINT, INC., as hereinabove alleged, the plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars in that the plaintiff, PINELLAS COUNTY, will be required to replace the entire 60-inch diameter and 54-inch diameter transmission lines, will be required in the replacement of said lines to design, acquire and provide to its Water System all materials needed for the construction of said pipeline, which includes but is not limited to supervision and inspection of manufacturing, acquiring materials, including new valves and new appurtenances, the acquisition of new rights-of-way, and the acquisition of temporary construction easements. In addition thereto, the plaintiff has been damaged in that it has been required to incur expenses in costs of inspection and testing of its pipeline to determine the existence of the defects and has been required to hire the services of consulting engineers for said purposes together with other experts *all* of which damages exceed the sum of Sixteen Million Dollars.

...

COUNT V
NEGLIGENCE AGAINST CH2M HILL SOUTHEAST, INC.

Plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the defendant, CH2M HILL SOUTHEAST, INC., and avers:

35. Plaintiff, PINELLAS COUNTY, realleges and reavers its allegations contained in paragraphs 1 through 16, Count I, above.

36. At all times material to this complaint, defendant,

CH2M HILL SOUTHEAST, INC., is a Florida corporation formerly known as Black, Crow and Eidsness, Inc. who changed its corporate name to CH2M HILL SOUTHEAST, INC. and who is an engineering company organized and existing under the laws of the State of Florida.

37. The defendant, CH2M HILL SOUTHEAST, INC., in consideration of the payment of $292,211.16, which was 4.5% of the total estimated construction costs of the project, provided final design plans and specifications pursuant to and under the terms of the contract between PINELLAS COUNTY and defendant, plaintiff's Exhibit B. In addition, the defendant provided construction supervision for an additional compensation of $72,728.11 which represents 1.12% of the estimated construction costs.

38. The defendant, CH2M HILL SOUTHEAST, INC., carelessly and negligently performed its duties owed to the plaintiff, PINELLAS COUNTY, under their contract, plaintiff's Exhibit B, in the following manner:

(A) Failed to properly direct, to perform, or to have performed soil survey investigations including, but not limited to, soil resistance to the flow of electric current, total soil acidity, soil drainage (groundwater fluctuation), soil texture, soil microbial activity, and soil chemistry. Failed to properly direct, to perform, or to have performed a corrosion testing program to determine the effects of the aforementioned local soil corrosion conditions on the rate of corrosion of prestressed steel wire embedded in mortar. As a direct result of such failure, the pipeline has been exposed to detrimental soil and groundwater conditions resulting in, but not limited to, a deterioration of and damage to the pipe mortar coating and the prestressed wire.

(B) Failed to properly direct, to perform, or to have performed investigations of the pipeline root for stray electrical currents, low soil resistivities, and aggressive soil and groundwater conditions and failed to design the pipeline to prevent damage by electrolytic currents and stray electrical currents. As a result, electrolytic currents and stray electrical currents have produced damages in, but not limited to, pipeline prestressed wires.

(C) Failed to properly prepare and review specifications for pipe manufacture by approving pipe manufactured with "Class IV" wire when, in fact, there were no recognized specifications which existed providing for such wire and by approving pipe

designed with inadequate safety factors;

(D) Failed to specify, to perform, or to have performed, sufficient inspection of materials used in the manufacture of pipe to insure the pipe would be manufactured and delivered as required by the specifications. As a result, materials were used in the manufacture of the pipe which did not meet specification requirements;

(E) Failed to specify, to direct, to perform, or to have performed, adequate quality control tests on the manufactured pipe which negligence included, but is not limited to, failure to detect that the pipe was being manufactured with materials which did not meet the design assumptions or the project specifications, failure to detect that the pipe was being manufactured with embrittled wire, that molds or forms were not correctly aligned during concrete pouring operations resulting in the cores of the pipes not meeting specified thicknesses, thereby causing stresses within the pipe greater than those for which it was designed, and failure to detect that the mortar coating did not, in all cases, meet specified minimum thickness and composition requirements, and failure to detect that the mortar coating was being damaged and was separating during the manufacturing operation, and failure to detect that application of the cement slurry prior to coating the prestress wire was erratic resulting in areas of unknown location throughout the pipeline which are highly susceptible to corrosion of the prestress wires and subsequent reduction of the line and possible ultimate failure;

(F) Failed to specify acceptance inspection procedures adequate to identify defective pipe. In addition thereto, the defendant failed to properly inspect the work, failed to identify incorrect pipe loading and unloading techniques, on the job pipe handling, and pipe installation procedures which resulted in damage to the pipe; and

(G) Failed to require proper repairs to pipe damaged during transportation or installation.

39. As a direct and proximate result of the negligence of the defendant, CH2M HILL SOUTHEAST, INC., the plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in paragraph 16.

WHEREFORE, the plaintiff, PINELLAS COUNTY, sues the defendant, CH2M HILL SOUTHEAST, INC., for damages in a sum in excess of Sixteen Million Dollars plus prejudgment interest and costs of this action.

COUNT VI
BREACH OF CONTRACT OF CH2M HILL SOUTHEAST, INC.

40. The plaintiff, PINELLAS COUNTY, realleges and reavers paragraphs 1 through 16, Count I, above.

41. The plaintiff, PINELLAS COUNTY, realleges and reavers paragraphs 36 through 39, inclusive, COUNT V, above.

42. The defendant, CH2M HILL SOUTHEAST, INC., breached its contract with the plaintiff, PINELLAS COUNTY, in the manner described in paragraph 37.

43. The plaintiff, PINELLAS COUNTY, has performed all conditions precedent required under the contract, plaintiff's Exhibit B.

44. As a direct and proximate result of the breach of contract by the defendant, CH2M HILL SOUTHEAST, INC., the plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in paragraph 16.

WHEREFORE, the plaintiff, PINELLAS COUNTY, sues the defendant, CH2M HILL SOUTHEAST, INC., for damages in a sum in excess of Sixteen Million Dollars plus prejudgment interest and costs of this action.

AGREEMENT

BETWEEN

BLACK, CROW & EIDSNESS, INC.
CONSULTING ENGINEERS

AND

BOARD OF COUNTY COMMISSIONERS
PINELLAS COUNTY, FLORIDA

AGREEMENT

THIS AGREEMENT, made and entered into by and between Pinellas County, a political subdivision of the State of Florida, hereinafter called the "Owner," and BLACK, CROW AND EIDSNESS, INC., a nationally known and recognized engineering firm, a corporation chartered and existing under the laws of the State of Florida, hereinafter called the "Consulting Engineers," on the date appearing on the last page hereof

WITNESSETH:

That for and in consideration of the covenants and promises to be carried out by each party herein, it is agreed by and between the parties hereto as follows:

WHEREAS, the Owner contemplates the need for improvements to its water system;

WHEREAS, the Consulting Engineers are staffed with qualified engineering personnel versed in the field(s) of Environmental Engineering as well as other fields of municipal engineering; and

WHEREAS, the Owner has need for the services of the Consulting Engineers in connection with sixty inch water transmission main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973, as well as other services of the Consulting Engineers from time to time for reports, design, professional services during construction and/or consultation;

NOW, THEREFORE, the Owner does hereby employ said Consulting Engineers to perform engineering services in connection with sixty inch water transmission main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973.

The Consulting Engineers agree to make a route selection survey considering at least three (3) separate routes, preliminary design, final design plans and specifications for the project known as Sixty Inch Water Transmission Main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973.

These services to include the following.

ITEM A - DESIGN IMPROVEMENTS

Upon receipt of specific written authorization by the Owner to the Consulting Engineers for the design of such improvements as may be designated, the Consulting Engineers will, with reasonable diligence, design authorized improvements specifically as follows:

1. Provide consultation and advise as to the necessity of providing or obtaining other services such as property, boundary, right-of-way, topographic and utility surveys, core borings, probings or subsurface explorations, hydrographic surveys, laboratory testing and inspection of samples or materials, or special consultation, and act as the Owner's representative in connection with any such services.

2. Prepare complete bases of design, together with statements of allowances, assumptions, and factors in order that the Owner may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the project.

3. Prepare and furnish contract drawings, contract forms (subject to the approval of the Owner's attorney), specifications, schedules of quantities, and detailed estimates of cost of the proposed improvements. The detailed plans and specifications will be made available to the Owner in 5 copies. Additional copies will be furnished to the Owner if requested, at the cost of reproduction plus reasonable handling charges.

4. Confer with officials of state or federal agencies having jurisdiction during the preparation of the plans and specifications, and assist the Owner in obtaining approval of the same.

5. Place copies of the plans and specifications on view in the Consulting Engineers' office and in offices of several certified builders' exchanges, and advise prospective bidders, suppliers of construction materials, and equipment manufacturers.

6. Attend bid openings and assist the Owner in tabulating and canvassing construction proposals, and make engineering recommendations in awarding of construction contract or contracts.

It is specifically understood that the services to be furnished under DESIGN OF IMPROVEMENTS do not include property, boundary and right-of-way surveys, or the makings of borings or soil bearing tests.

ITEM B - PROFESSIONAL SERVICES DURING CONSTRUCTION

Upon receipt of specific written authorization by the Owner, following the award of the construction contract for the proposed program of improvements, or undertaking the construction of these improvements by the Owner's forces, the Consulting Engineers will perform the following professional services during construction:

1. An average of 4 visits per month to the construction site during construction to determine if the work is proceeding in accordance with the Contract Documents. By means of these visits the Consulting Engineers will endeavor to protect the Owner against defects and deficiencies in the work of the contractor. This shall not imply guarantee of the contractor's performance.

2. Check shop drawings and descriptive data submitted by the contractor as to general conformity to the plans and specifications.

3. Approval of pay estimates.

4. Consult and advise with the Owner, act as the Owner's representative, issue all instructions of the Owner to the contractor, prepare routine change orders as required and act as interpreter of the terms and conditions of the Contract Documents and judge the performance thereunder. Whenever the Consulting Engineers consider it necessary or advisable to effect proper carrying out of the intent of the Contract Documents, they may, as the Owner's representative, direct the contractor to stop work or require special examination or testing of the work.

5. Prepare and submit routine proposed contract change orders. For purposes of this agreement the term "routine change order" is defined as a change not substantially altering the scope of work.

6. Following a final inspection with the Owner's representatives, representatives of any governmental agencies having jurisdiction, and representatives of the contractor, recommend as to final acceptance of the construction work.

7. Furnish 2 sets of complete prints for each construction contract, showing changes made during the construction process based on information furnished by the construction contractor to the Consulting Engineers.

It is specifically understood that the services to be furnished under PROFESSIONAL SERVICES DURING CONSTRUCTION do not include the testing of materials or the furnishing of resident project representatives, field engineers, and inspection personnel.

ITEM C - RESIDENT PROJECT REPRESENTATION

The Consulting Engineers shall, if authorized by the Owner, furnish the services of a resident engineer and inspectors as required to observe the construction work of the contractor on a daily basis. The said observation of construction shall include field observation field inspection of materials and work, preparation of

details for the prosecution of the work, preparation of daily progress reports, monthly summaries, and the review and verification of all partial and final estimates for payments to contractors. Monthly progress reports shall include the critical path method of reporting.

Through on-site observations of the work and progress, and field checks of materials and equipment by the resident engineer and inspectors, the Consulting Engineers will endeavor to provide for the protection of the Owner against defects and deficiencies in the work, but the furnishing of such resident engineers and inspectors shall not make the Consulting Engineers responsible for the contractor's failure to perform the construction work in accordance with the Contract Documents.

ITEM D - SUPPLEMENTARY SERVICES

If authorized in writing by the Owner, the Consulting Engineers will furnish or obtain from others additional services of the following types:

1. Furnishing property, photogrammetric, boundary, right-of-way, profiles, cross sections, horizontal and vertical surveys, topographic and utility surveys and hydrographic surveys.

2. Soils, foundation and materials engineering services including borings, probings or subsurface explorations, laboratory testing and inspection of samples of materials and other special consultation.

3. Biological consultations, bioassays, ecological impact evaluations and related environmental services.

4. Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Additional services due to significant changes in general scope of the project or its design including, but not limited to, changes in size, complexity or character of construction.

6. Revising previously approved studies, reports, design documents, drawings or specifications.

7. Preparing documents for alternate bids requested by the Owner for work which is not executed.

8. Preparing detailed renderings, exhibits or scale models for project.

9. Furnishing additional copies of reports and additional prints of drawings and specifications.

10. Investigations involving detailed consideration of operation, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by the Owner.

11. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) prolongation of the construction contract time by more than twenty percent (20%); (3) acceleration of the work progress involving services beyond normal working hours; and (4) contract default due to delinquency or insolvency.

12. Additional services and costs necessitated by out-of-town travel required of the Consulting Engineers other than visits to the project as required by this Agreement.

13. Serving as expert witness for the Owner in any litigation or other proceeding involving the project.

14. Additional services in connection with the project not otherwise provided for in this Agreement.

ITEM E - THE OWNER'S RESPONSIBILITIES

It is understood the Owner will:

1. Provide full information as to its requirements for the project.

2. Assist the Consulting Engineers by placing at their disposal all available information pertinent to the site of the project, including previous reports and any other data relative to design and construction of the project.

3. Designate a person or persons in writing to serve as the Owner's representative with respect to the work to be performed under this Agreement.

4. Guarantee access to and make all provisions for the Consulting Engineers to enter upon public and private lands as required for the Consulting Engineers to perform their work under this Agreement.

5. Examine studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Consulting Engineers and render decisions in writing pertaining thereto within a reasonable time so as not to delay the services of the Consulting Engineers.

6. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.

7. Provide such legal, accounting and insurance counseling services as may be required for the project.

8. Give prompt written notice to the Consulting Engineers whenever the Owner observes, or otherwise becomes aware of, any defect in the project.

9. Obtain approval of all governmental authorities having jurisdiction over the project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the project.

10. Obtain all properties, easements and rights-of-way necessary for the work.

11. Furnish or direct the Consulting Engineers to provide at the Owner's expense, necessary SUPPLEMENTARY SERVICES.

TEM F - FEES AND PAYMENTS

1. For the route selection survey and those services enumerated under Item A, Design of Improvements, and Item B, Professional Services During Construction, the Owner agrees to pay and the Consulting Engineers agree to accept as full compensation thereof, fees equal to 5.62% of the construction cost.

Construction cost is defined as the actual cost of the work, exclusive of land and right-of-way, engineering inspection, and Owner's overhead.

The Owner may make progress payments in accordance with the A.S.C.E. manual, Reports of Engineering Practice No. 45, 1972. However, a payment of 80% of the total engineering fee shall be due and payable upon completion and submission of final plans and specifications, based upon a detailed construction cost estimate to be submitted with said final plans and specifications, with the understanding that any fees so paid, as computed from the detail estimated cost, will be adjusted to the actual construction costs as these become known. If the Owner deletes a portion of the work from the project after the design of the portion has been completed by the Consulting Engineers, then the fee shall be 4.50 percent of the detailed construction estimate for such portion. If the construction work

does not proceed within a period of twenty-four (24) months after the submission of the detailed plans and specifications to the Owner, then the final fee for design services shall be 4.50 percent of the detailed estimated cost.

Upon submission of the plans and specifications to the Owner, and upon their acceptance, should any revision to change the nature or scope of the work be necessary, the Consulting Engineers shall be compensated for making such alterations and additions to the detailed plans and specifications as authorized by the Owner, said compensation being on a Cost-Plus basis as hereinafter defined.

2. The balance of the fee shall be for Item B, Professional Services During Construction, and shall be paid monthly in proportion to the value of work completed.

3. For services of RESIDENT PROJECT REPRESENTATION (Item C) and inspection, which are authorized, the Owner agrees to pay and the Consulting Engineers agree to accept as full compensation for the furnishing of resident inspection an amount payable monthly equal to the payroll or salary cost of such resident engineer and inspector or inspectors, times a factor of 2.0 to provide general overhead and profit, plus transportation costs of $0.18 per mile. The Owner shall have the right to review and approve the qualifications and salary costs paid to the resident engineers and inspectors.

4. Payment for SUPPLEMENTARY SERVICES (Item D) shall be paid monthly upon presentation of the Consulting Engineer's detailed statement as follows:

Where supplementary services are of a nature so as to be performed by personnel assigned to established offices of the Consulting Engineers, the Consulting Engineers will receive compensation on a Cost-Plus basis as hereinafter defined.

ITEM G - DEFINITIONS

1. Cost-Plus is defined as payroll or salary cost plus one hundred and fifty percent (150%) plus reimbursable expenses.

2. Payroll or salary cost shall be defined by the ASCE - Manuals and Reports on Engineering Practice - No. 45, 1972, as follows:

> *Salary cost is defined as the cost of salaries (including sick leave, vacation, and holiday pay applicable thereto) of engineers, technicians, draftsmen, stenographers, surveymen, clerks, etc., for time directly chargeable to the project plus unemployment, excise, and payroll taxes, and contributions for social security, employment compensation insurance, retirement benefits, and medical insurance benefits.*

3. Reimbursable expenses shall mean the actual expense of transportation and subsistence of principals and employees when traveling in connection with the project, toll telephone calls and telegrams, reproduction of reports, drawings and specifications, and similar project related items, plus 15% to provide for applicable general overhead. Reimbursable expenses with respect to automobile travel by company or personnel-owned vehicles shall be charged at the rate of $0.18 per mile.

ITEM H - GENERAL CONSIDERATIONS

1. *Ownership of Documents*

All documents, including original drawings, estimates, specifications, field notes and data, shall be the property of the Owner. The Owner shall have the right to reuse the same for extensions of this project of this project or for

new projects, without the written permission of the Consulting Engineers and without paying any further compensation to said Consulting Engineers. Any reuse without specific written verification or adaptation by the Consulting Engineers will be at the Owner's sole risk and without liability or legal exposure to the Consulting Engineers.

2. *Estimates*

The Consulting Engineers have no control over the cost of labor and materials, or over competitive bidding and market conditions, and the estimates of construction cost provided for herein are made on the basis of their experience and qualifications. The Consulting Engineers do not guarantee the accuracy of such estimates as compared to the contractor's bids or the project construction cost.

3. *Work by the Owner's Forces*

In the event the Owner elects to construct a portion or portions of the improvements planned by the Consulting Engineers with the Owner's own forces, the total construction cost to be used in determining the Consulting Engineer's compensation under Item F shall be provided under Item F, Paragraph 1, together with the Consulting Engineers' estimate for the portion(s) of the work done by the Owner's forces.

The Owner reserves the right to have qualified county personnel perform engineering services under Items C and D on this project without compensating the Consulting Engineers for these services where the Owner has given written notice to the Consulting Engineers prior to the Consulting Engineers rendering such services.

4. *Insurance*

The Consulting Engineers shall secure and maintain coverage as will protect them from claims under the Workmen's Compensation Act and from claims for bodily

injury, death, or property damage which may arise from the performance of their services under this Agreement.

5. *Successors and Assigns*

The Owner and the Consulting Engineers each binds himself and his partners, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the Owner nor the Consulting Engineers shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

7. *Termination of Contract*

This Agreement may be terminated at any time by either party hereto. Written notice of intent to terminate shall be given by either party hereto to the other party at least 30 days prior to the date of final termination. In the event of such termination, the Consulting Engineers shall be fully compensated under the provisions of this Agreement for all work performed and services rendered prior to the date of final termination.

8. *Contingent Fees*

The Consulting Engineers warrant that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consulting Engineers, to solicit or secure this Agreement, and that they have not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consulting Engineers, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

9. *Transportation Costs*

The Owner shall not reimburse the Consulting Engineers for the cost of transportation outside Pinellas County except where such travel is authorized by the Owner under Supplementary Services.

10. *Project Coordinator*

The Consulting Engineers shall provide, at no additional cost to the Owner, a project coordinator who shall coordinate all phases of the engineering services to be performed herein, including supplementary services.

ITEM K - EXECUTION

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed on behalf of its proper officers of the Board of County Commissioners, their seal hereunto affixed and attested by witnesses whose names are subscribed opposite each respective signature, and the Consulting Engineers have caused this instrument to be executed in their names by their duly authorized officers and under corporate seals affixed this 24th day of March, 1975.

Owner:
BOARD OF COUNTY
COMMISSIONERS
PINELLAS COUNTY,
FLORIDA

ATTEST: HAROLD MULLENDORE,
CLERK

_____ By_____
Title Chairman

By _____

Consulting Engineers:
BLACK, CROW AND
EIDSNESS, INC.

ATTEST

_____ By_____

Corporate Secretary Title Vice President

APPROVED AS TO FORM AND
CORRECTNESS

APPROVED AS TO
FORM AND CON
TENT:

_____ _____

Owner's Attorney Black, Crow and
Eidsness, Inc. - Counsel

APPENDIX I

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA
CASE NO. 83-13313-12

PINELLAS COUNTY, FLORIDA

Plaintiff,

vs.

INTERPACE CORP.; GHA LOCK JOINT, INC.; CH2M HILL SOUTHEAST, INC.; BUMBY & STIMPSON, INC. and SUNSHINE TRANSFER, INC.,

Defendants.

_____/

MOTION TO DISMISS COUNTS V AND VI OF COMPLAINT

COMES NOW the Defendant, CH2M HILL SOUTHEAST, INC., hereinafter referred to as "CH2M HILL", by and through its undersigned attorneys, and files this, its Motion to Dismiss Counts V and VI of the Complaint of Pinellas County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "PINELLAS COUNTY", and says:

1. Count V of Plaintiff's Complaint alleges CH2M HILL carelessly and negligently performed duties allegedly owed Plaintiff. PINELLAS COUNTY has failed to allege sufficient ultimate facts establishing the existence of a cause of action for negligence.

2. In order to establish the existence of a cause of action for negligence, Plaintiff must show the existence of a duty to protect Plaintiff, a subsequent breach of that duty, and injuries sustained as a proximate result of the breach. *Clark v. Boeing Company*, 395 So.2d 1226 (Fla. 2d DCA 1981); *Blackton Building Supply Company, Inc. v. Garesche*, 383 So.2d 250 (Fla. 5th DCA 1980); *Welsh v. Metropolitan Dade County*, 366 So.2d 518 (Fla. 3d DCA 1979); *Lake Parker Mall,*

ıc. v. Carson, 327 So.2d 121 (Fla. 2d DCA 1976). Plaintiff has failed ɔ allege sufficient ultimate facts establishing the existence of a uty to protect Plaintiff.

3. The contract between CH2M HILL, formerly known as lack, Crow & Eidsness, Inc., and PINELLAS COUNTY, a copy of vhich was attached to the Complaint as Exhibit "B", specifically rovides on page 3 as follows:

> It is specifically understood that the services to be furnished under DESIGN OF IMPROVEMENTS do not include property, boundary and right-of-way surveys, or the making of borings or soil bearing tests.

The contract further provides on page 4:

> It is specifically understood that the services to be furnished under PROFESSIONAL SERVICES DURING CONSTRUCTION do not include the testing of materials or the furnishing of resident project representatives, field engineers, and inspection personnel.

Page 5 of the contract provides that the consulting engineers, CH2M HILL, shall furnish resident project representation only if uthorized and shall furnish the listed supplementary services only f authorized in writing by the Owner. Plaintiff has failed to allege sufficient ultimate facts establishing the existence of any such uthorization to CH2M HILL. Additionally, nowhere in the conract is there a provision that CH2M HILL would supervise the construction.

4. Unless PINELLAS COUNTY can allege the specific contractual duties CH2M HILL was allegedly to perform, PINELLAS COUNTY cannot have a cause of action. The Court in the recent case of *Bernard Johnson, Inc. v. Continental Constructors, Inc.*, 630 S.W.2d 365 (Tex. Ct. App. 1982), stated at page 371 the following fundamental proposition:

> The architect's relation to the parties and the work is one specified by the contracting parties in their bargained-for agreement. So long as the contracting parties have freedom to contract as they wish, with respect to the architect's

power and role, *these will vary considerably, and no rule of general application may logically be stated* which is founded simply upon the status of the Defendant as "an architect" *or upon what one believes to be the customary relationship between the work, the architect, the owner, and the contractor;* particularly, a general rule should not be founded upon a presumption that the architect has power over the contractor's performance, in general, or in any particular of the work. (Emphasis supplied).

5. The fundamental proposition of Bernard Johnson has been asserted in Florida through the decision of *Audlane Lumber & Builder's Supply v. D.E. Britt Associates*, 168 So.2d 333 (Fla. 2d DCA 1964); where it is held in a negligence action brought against a supplier of prefabricated wooden trusses and its engineering design firm, that "there is no magic in the generality 'professional service." Id. at 335. The Court stated that the nature and extent of the professional's duty varies in the different circumstances in which the duty arises. Any duties which CH2M HILL owed PINELLAS COUNTY arise out of the contract between the parties and are strictly limited to the terms contained within that agreement. Plaintiff has failed to establish the existence of a duty on CH2M HILL's part to protect PINELLAS COUNTY from the damages which are the subject of the Complaint.

6. Plaintiff alleges in Count VI of its Complaint that Defendant, CH2M HILL, breached its contract with Plaintiff, PINELLAS COUNTY in the manner described in paragraph 38 of its Complaint.

7. In order to recover for breach of contract, Plaintiff must establish the existence of a contract between itself and the Defendant, a subsequent breach of that contract, and that Plaintiff's damages flowed from that breach of contract. *Knowles v. C.I.T. Corp.*, 346 So.2d 1042 (Fla. 1st DCA 1977). Plaintiff has failed to allege sufficient ultimate facts to establish a breach of any of the duties specified in the contract between itself and CH2M HILL.

8. Plaintiff has failed to allege sufficient ultimate facts to show that CH2M HILL failed to follow the standard of care usually exercised by other professional engineers in the same general area and in like circumstances at the time of the design and of the construction of the pipeline.

WHEREFORE, the Defendant, CH2M HILL SOUTHEAST, NC., moves this Court to dismiss Counts V and VI of Plaintiff's omplaint for failure to state a cause of action, and grant efendant such other and further relief as this Court deems proper.

I CERTIFY that copy hereof has been furnished by U.S. Mail his 9th day of December, 1983, to: John T. Allen, Jr., Esquire, 4508 entral Avenue, St. Petersburg, FL 33711, and John D. Shofi, squire, Suite 201, Bayshore Building, 2907 Bay to Bay Blvd., ampa, FL 33609.

Stephen M. Bull
BULL & NEILSON
Suite 4100
One South Orange Avenue
Orlando, Florida 32801
(305) 843-5291
Attorneys for CH2M HILL
Southeast, Inc.

APPENDIX J

IN THE CIRCUIT COURT FOR
PINELLAS COUNTY, FLORIDA
Civil No. 83-13313-12

PINELLAS COUNTY, a political subdivision of the State of Florida,

Plaintiff,

vs.

INTERPACE CORP.; GHA LOCK JOINT, INC.; CH2M HILL SOUTHEAST, INC.; BUMBY & STIMPSON, INC. and SUWANEE TRANSFER, INC.

Defendants.
_____/

ORDER ON CH2M HILL SOUTHEAST, INC.'s MOTION TO DISMISS COUNTS V AND VI OF THE COMPLAINT

This matter came on to be heard April 23, 1984, on Defendant, CH2M HILL SOUTHEAST, INC.'s Motion to Dismiss Counts V and VI of the Complaint, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is therefor,

ORDERED AND ADJUDGED that the Motion to Dismiss of CH2M HILL SOUTHEAST, INC. is denied without prejudice and Defendant, CH2M HILL SOUTHEAST, INC., shall file its response to the Complaint within 30 days from the date of this Order.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 2nd day of May, 1984.

_____
Mark R. McGarry, Jr.
Circuit Judge

I HEREBY CERTIFY that a conformed copy hereof has been urnished by mail this 2nd day of May, 1984, to all counsel of ecord on the attached list.

/s/ Lori McKay
Judicial Assistant

SERVICE LIST

OHN T. ALLEN, JR., Esquire
ohn T. Allen, Jr., P.A.
508 Central Avenue
t. Petersburg, FL 33711
13/321-3273
ttorney for Plaintiff

EFFREY S. O'BRIEF, Esquire
OHN A. YANCHUNIS, Esquire
reene, Mann, Mastry & Burton
entral Avenue & 4th Street
enth Floor, Florida Federal Bldg.
ost Office Box 3542
t. Petersburg, FL 33731
13/896-7171
ttorneys for Interpace Corp.

. WALLACE POPE, JR., Esquire
ohnson, Blakely, Pope, Bokor &
Ruppel, P.A.
P.O. Box 1368
Clearwater, FL 33517
813/461-1818
Attorneys for GHA Lock Joint, Inc.

M.D. SAMPLES, Esquire
2500 Bryan Tower
Dallas, TX 75201
Attorney for GHA Lock Joint, Inc.

WILLIAM A. HARMENING, Esquire
Pan American Bank Bldg., Ste. 1000
P.O. Box 1706
Orlando, FL 32802
305/422-3912
Attorney for Bumby & Stimpson, Inc.

JOHN D. SHOFI, Esquire
Suite 201, Bayshore Bldg.
2907 Bay to Bay Boulevard
Tampa, FL 33609
813/831-5599
Attorney for Suwannee

G. LEE GARRETT, JR., Esquire
KENT E. MAST, Esquire
JOHN W. WATKINS, Esquire
3300 First Atlanta Tower
Atlanta, GA 30383

Rev. 4/20/84
108-24

APPENDIX K

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA

CASE NO. 83-13313-8

PINELLAS COUNTY, FLORIDA,

Plaintiff,

vs.

INTERPACE CORPORATION and
CH2M HILL SOUTHEAST, INC.,

Defendants.
_____/

DEFENDANT CH2M HILL SOUTHEAST, INC.,
OBJECTION TO THE PINELLAS COUNTY FIRST
AMENDED MOTION FOR LEAVE TO AMEND COMPLAINT

Defendant, CH2M HILL SOUTHEAST, INC., [hereinafter CH2M HILL] by and through its undersigned attorneys, hereby objects to the First Amended Motion for Leave to Amend Complaint of PINELLAS COUNTY and says:

1. On or about November 23, 1983, PINELLAS COUNTY filed its original Complaint initiating this lawsuit.

2. On December 24, 1987, PINELLAS COUNTY filed a Motion for Leave to Amend Complaint.

3. On March 29, 1988, CH2M HILL filed an objection to the PINELLAS COUNTY Motion for Leave to Amend Complaint. The objection outlined CH2M HILL'S arguments against permitting the Plaintiff to circumvent the statute of limitations and prior Court orders by procedurally amending its Complaint.

4. On April 15, 1988, PINELLAS COUNTY filed a First Amended Motion for Leave to Amend Complaint to which is attached a revised First Amended Complaint for Negligence,

Breach of Contract, Breach of Implied Warranty of Fitness for Particular Purpose, Breach of Implied Warranty of Merchantability, Strict Liability in Tort, Fraud, and Punitive Damages [hereinafter Revised Complaint]. The Revised Complaint raises the same issues that prompted CH2M HILL'S objection of March 29, 1988. In addition, the Revised Complaint alleges two more new and distinct causes of action against CH2M HILL. These new and distinct negligence actions essentially allege that CH2M HILL:

A. Negligently failed to reject shop drawings submitted by the co-defendant Interpace Corporation which shop drawings are claimed to permit the use of Class IV wire. (See Revised Complaint Paragraph 66(S), page 44).

B. Negligently failed to require co-defendant Interpace Corporation to provide wire test specimens and steel test specimens as outlined pursuant to the contract applicable between Interpace Corporation and Pinellas County. (See Revised Complaint Paragraph 66(T), page 44).

4. CH2M HILL objects to the First Amended Motion for Leave to Amend Complaint for the reasons explained in DEFENDANT'S CH2M HILL SOUTHEAST, INC., OBJECTION TO THE PINELLAS COUNTY MOTION FOR LEAVE TO AMEND COMPLAINT filed on March 29, 1988. CH2M HILL raises all the legal and equitable arguments stated in its March 29, 1988, objection as if stated verbatim herein.

WHEREFORE, CH2M HILL SOUTHEAST, INC., respectfully requests that this Court;

(1) deny the First Amended Motion to Amend the Complaint as to those claims raising new negligence actions that are barred by the statute of limitations.

(2) deny the First Amended Motion to Amend the Complaint or in the alternative limit the Plaintiff's remedies under the Amended Complaint to those damages attributable solely to each Defendant's relative degree of fault, and

(3) reassert that Pinellas County's relief against any Defendant is limited to the percentage of Plaintiff's damages attributable solely to each Defendant's negligence without any right to relief based on vicarious, collateral, joint and several or any other form of derivative liability.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 10th day of May, 1988, by U.S. mail to: JOHN T. ALLEN, JR., ESQUIRE, 4508 Central Avenue, St. Petersburg, FL 33711; G. LEE GARRETT, JR., ESQUIRE, 3300 First Atlanta Tower, Atlanta, GA 30383; MICHAEL J. KEANE, ESQUIRE, Post Office Box 31687, St. Petersburg, FL 33732; and to JEFFREY S. O'BRIEN, ESQUIRE, Post Office Box 3542, St. Petersburg, FL 33731.

_____

STEPHEN M. BULL, ESQUIRE

_____

STEVEN R. SCHOOLEY, ESQUIRE
BULL & MIZE
111 North Orange Avenue, Suite1200
Orlando, Florida 32801
Telephone: 305/843-5291

Attorneys for Defendant
CH2M HILL SOUTHEAST, INC.

SRS:sa
108-024

APPENDIX L

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

Circuit Civil No. 83-13313-08

PINELLAS COUNTY,

Plaintiff,

vs.

INTERPACE CORPORATION and
CH2M HILL SOUTHEAST, INC.,

Defendants.
_____/

ORDER GRANTING MOTION OF PLAINTIFF, PINELLAS COUNTY, TO FILE FIRST AMENDED COMPLAINT

THE FOREGOING CAUSE came on to be heard upon Plaintiff, PINELLAS COUNTY'S, Motion to file First Amended Complaint and the same having been argued by counsel for the respective parties and duly considered by the Court, it is,

ORDERED AND ADJUDGED as follows:

(1) Plaintiff, PINELLAS COUNTY'S, Motion be and the same is hereby granted upon the condition that the Plaintiff, PINELLAS COUNTY, file a More Definite Statement as to the fraud count, Count VIII, within 10 days from May 16, 1988. Service of the First Amended Complaint shall be made upon the Defendants simultaneous with the filing of the More Definite Statement.

(2) Defendants shall have twenty (20) days after service of the First Amended Complaint and More Definite Statement as ordered by this Court in which to plead to Plaintiff's First Amended Complaint.

DONE AND ORDERED in chambers, St. Petersburg, inellas County, Florida, this 20 day of May, 1988.

/s/ FRED L. BRYSON
Circuit Judge

Copies furnished to:

ohn T. Allen, Jr., Esquire
Michael J. Keane, Esquire
G. Lee Garrett, Jr., Esquire
Stephen Bull, Esquire
effrey O'Brien, Esquire

APPENDIX M

Excerpts of the First Amended Complaint for Negligence, Breach of Contract, Breach of Implied Warranty of Fitness for Particular Purpose, Breach of Implied Warranty of Merchantability, Strict Liability in Tort, Fraud, and Punitive Damages

M - 2

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
Circuit Civil No. 83-13313-08

PINELLAS COUNTY,

Plaintiff

vs.

INTERPACE CORPORATION,
CLEVEPAK CORPORATION, AND
MADISON MANAGEMENT GROUP, INC.,
AS SUCCESSORS OF INTERPACE
CORPORATION; AND CH2M HILL
SOUTHEAST, INC.,

Defendants.
_____/

FIRST AMENDED COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, STRICT LIABILITY IN TORT, FRAUD, AND PUNITIVE DAMAGES

The Plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the Defendants, INTERPACE CORPORATION, a foreign corporation; CLEVEPAK CORPORATION, a foreign corporation, and MADISON MANAGEMENT GROUP, INC., a foreign corporation, as successors of INTERPACE CORPORATION; and CH2M HILL SOUTHEAST, INC., a Florida corporation, and avers:

COUNT I
NEGLIGENCE

1. At all times material to this First Amended Complaint, the Plaintiff, PINELLAS COUNTY, is a political subdivision of the State of Florida.

2. At all times material to this First Amended Complaint, the Defendant, INTERPACE CORPORATION, is a foreign corporation organized and existing under the laws of the State

of Delaware and is authorized to do business in the State of Florida. On or about July 2, 1981, GHA Lock Joint, Inc. purchased certain domestic assets of the Lock Joint Products Division of the Defendant, INTERPACE CORPORATION, and contractually agreed to assume certain liabilities incurred by the Defendant, INTERPACE CORPORATION. Plaintiff is a third-party beneficiary of the contract entered into between GHA Lock Joint, Inc. and the Defendant, INTERPACE CORPORATION, or its subsidiary. On or about May 3, 1985, the Defendant, INTERPACE CORPORATION, merged with or changed its name to Clevepak Corporation, and subsequently merged with or changed its name to Madison Management Group, Inc. on or about July 9, 1987. Consequently, Clevepak Corporation and/or Madison Management Group, Inc. are successors of the Defendant, INTERPACE CORPORATION, and are liable for any and all acts alleged herein to which the Defendant, INTERPACE CORPORATION, is liable.

3. In March of 1975, the Plaintiff. PINELLAS COUNTY, executed an agreement with the consultant engineer, Black, Crow and Eidsness, Inc., whose corporate name has been changed to CH2M HILL SOUTHEAST, INC., for the design of a transmission main and selection of a route from the point of termination of the Cypress Creek transmission main which is located at the Pasco-Pinellas County line to the North Booster Station located on U.S. Highway 19 north of S.R. 580. In February of 1977, the Plaintiff, PINELLAS COUNTY, executed a contract with the Defendant, INTERPACE CORPORATION, as the pipe manufacturing contractor, for the furnishing of approximately 63,400 linear feet of prestressed concrete pipe, 60 inches in diameter, and 8,160 linear feet of prestressed concrete pipe, 54 inches in diameter, together with other fittings and specials. Both Defendants knew before entering into their obligation in relation to said transmission lines, that both the 54-inch diameter and, in particular, the 60-inch diameter transmission line, described herein, would constitute the heart of the Pinellas County Water System, and would supply water to all retail customers of the Pinellas County Water System and five wholesale customers of the Pinellas County Water System who are Pasco County and four municipalities located within Pinellas County. Said transmission lines were to be utilized and are being utilized at the present time to receive water from the County's Cypress Creek Wellfield and the County's Cross Bar Ranch Wellfield located in Pasco County.

4. Both Defendants knew or should have known that said pipelines were to be the most critical transmission line and an integral part in the entire Pinellas County Water System which, after construction, could not be taken out of service except under extremely unusual conditions, and for short periods of time during the rainy season or the winter months. So critical is the utilization of said transmission lines that without their existence, or should their use be disrupted for any unreasonable or substantial period of time, a water emergency or water crisis would have to be declared in Pinellas County which would result in water rationing.

5. As a result of the need for said transmission lines, the Plaintiff, PINELLAS COUNTY, contracted in Pinellas County with the following named Defendants for the following indicated services for the design, creation of specifications, and manufacture of said transmission lines:

(A) With Defendant, INTERPACE CORPORATION, the pipe manufacturing contractor, a contract for the manufacture of the 60-inch diameter and 54-inch diameter transmission pipe sections which were to be installed into the transmission pipelines, said contract being executed on the 25th day of February, 1977, wherein the Defendant, INTERPACE CORPORATION, was to supply through its Lock Joints Products Division, pipeline sections for construction of the pipelines. A copy of the material portions of the contract documents is attached to this Complaint together with the appropriate bid and bidding information accepted by the Defendant, INTERPACE CORPORATION, as Plaintiff's Exhibit "A".

(B) With Defendant, CH2M HILL SOUTHEAST, INC., which was known by the name of Black, Crow and Eidsness, Inc. at the time of the execution of a contract dated the 24th day of March, 1975, between the Plaintiff, PINELLAS COUNTY, and Black, Crow and Eidsness, Inc. for Black, Crow and Eidsness, Inc. to act as the County's consulting engineers, wherein Black, Crow and Eidsness, Inc., was to provide, among other duties, route selection survey; selection of the choice of materials to be specified for the component parts of the pipeline; the investigation of above-ground and below-ground chemical, physical, soil, groundwater, and electrical conditions and their potential effects on the materials selected for the component parts of the pipeline; to provide the final design and construction plans and specifications for the pro-

ject; provide consultation and advise as to the necessity of providing or obtaining other services such as laboratory testing and inspection of samples or materials and special consultations; and to provide construction supervision such as visiting the construction site on an average of four (4) times per month to protect the owner against defects and deficiencies in the work of the contractor, to check shop drawings and descriptive data as to the general conformity to the plans and specifications of the project, and to require special examination or testing of the work and recommend final acceptance of the work. A copy of said contract is attached to this Complaint as Plaintiff's Exhibit "B".

6. Thereafter, the Defendant, INTERPACE CORPORATION, through its Lock Joint Products Division, pursuant to the plans and specifications designed and written by the Defendant, CH2M HILL SOUTHEAST, INC., as more particularly described in Plaintiff's Exhibit "A", commenced construction of the pipe sections, fittings, and other specials which, when fitted together, would constitute the 60-inch diameter and 54-inch diameter pipelines.

7. Throughout the period from approximately the 25th day of February, 1977, to the early part of 1978, the Defendant, INTERPACE CORPORATION, designed and manufactured sections of the 60-inch diameter and 54-inch diameter pipes, pipe fittings, and specials, which were delivered to the respective construction areas and installed in the ground by Bumby & Stimpson, Inc., the installation contractor. The said 60-inch diameter pipeline, when completed, consisted of approximately 12 miles of pipeline or 63,400 linear feet of pipe. The 54-inch diameter pipeline consists of approximately 1.5 miles of pipeline or 8,160 linear feet of pipe.

8. The additional importance of the 54-inch diameter pipeline is that along with a parallel 42-inch diameter main, it connects, at its northern end, to the West Coast Regional Water Supply Authority (WCRWSA) regional 66-inch diameter transmission main near the Pasco-Pinellas County line, and transports all potable water made available to Pinellas County from the Cross Bar Ranch and Cypress Creek Wellfields operated by WCRWSA in neighboring Pasco County to the north. At its northern end, the 60-inch diameter pipeline connects to the southern ends of the parallel 42-inch diameter and 54-inch diameter pipelines, the Eldridge-Wilde Wellfield transmission main, and distribution mains adjacent

o, and near, the S.K. Keller Pump Station, and transports the available water south into the densely populated areas of Pinellas County. The 60-inch and 54-inch diameter pipelines thus form the major transmission conduit and lifeline for system users of potable water coming from the three major wellfields to the north. The 60-inch and 54-inch diameter pipelines are an integral part of the entire Pinellas County Water System.

9. On the 2nd day of October, 1978, the 60-inch diameter pipeline was completed and placed into service and on the 2nd day of October, 1978, the 54-inch diameter pipeline was completed and placed into service.

10. Thereafter, the Plaintiff, PINELLAS COUNTY, utilized the 60-inch diameter pipeline and the 54-inch diameter pipeline for the supply of potable water to its retail and wholesale customers of the Pinellas County Water System. On the 13th day of November, 1979, in the area of a community known as East Lake Woodlands, a section of the 60-inch diameter pipeline exploded and ruptured, causing the opening of a gigantic hole in the area of the pipeline, rendering a section of the 60-inch diameter pipeline totally unusable. As a result of the pipeline failure, the Plaintiff, PINELLAS COUNTY, embarked upon an extensive investigation to determine the cause of the pipeline failure. Thereafter, commencing on the 19th day of November, 1979, the Plaintiff, PINELLAS COUNTY, through its consulting engineers, Jones, Edmunds & Associates, Inc., conducted an extensive investigation into the design and manufacture of both the 60-inch diameter and 54-inch diameter transmission lines. A pressure test to the design working pressure of 150 pounds per square inch (psi) took place in the 60-inch diameter transmission line between Station 82+88 and Station 243+00 on the 11th day of December, 1980, resulting in a rupture of the pipeline 90 seconds after the design working pressure was attained. An examination of the resulting rupture revealed evidence of severe corrosion pitting on the wire at the rupture location and the discovery of severely corroded broken wires beneath a delamination in the outer coating. Subsequently, a detailed inspection of pipe condition, pipe design, and pipe materials was performed on pipes removed from throughout the 60-inch diameter and 54-inch diameter transmission lines. This inspection resulted in the additional finding of sections of pipeline which were faulty in design, failed to meet specifications for the construction of the

pipeline, and were the result of faulty manufacturing techniques, all of which have resulted in the determination by the Plaintiff, PINELLAS COUNTY, that both the 60-inch diameter and 54-inch diameter transmission lines are undependable and riddled with defective pipe, which will result in periodic and frequent failures of numerous and various sections of pipeline in the future to the point that said pipeline needs to be totally replaced at a cost in excess of Sixteen Million Dollars. The rupture of the 60-inch diameter pipeline on November 13, 1979 and the second rupture of the 60-inch diameter pipeline on December 11, 1980 both caused extensive other property damage to the Plaintiff, PINELLAS COUNTY, and to private landowners, in addition to causing extensive damage to the pipeline itself, as follows:

(A) Internal labor by the Plaintiff, PINELLAS COUNTY; equipment and material costs; the administrative staff required to respond to both ruptures, including personnel needed to respond initially to the rupture sites and travel to and from the scenes; professional engineering services required to ascertain needed repairs and to specify repair materials; the time of the Plaintiff's, PINELLAS COUNTY'S, Water System and purchasing personnel to order materials and to engage a contractor, to inspect the repair work, to perform chlorination, and to perform laboratory work; and the demands on the Plaintiff's, PINELLAS COUNTY'S, Water System resources to advise media, consumers, and other government agencies, and to negotiate with homeowners and landowners concerning repairs required to damaged private property proximately caused by the rupture or ruptures;

(B) Direct and indirect contract costs for labor, equipment, and materials, including the costs to acquire fill dirt to replace dirt lost through erosion; repair of damaged private landscaping; restoration of the rupture sites; repair of water damage to a nearby private residence; excavation and removal of failed pipe sections; transportation, offloading, and installation of replacement pipe; investigation of possible damage to adjacent pipes; and removal and disposal of damaged pipe;

(C) The acquisition of additional easements and rights-of-way adjacent to the pipeline to build a safety zone to protect private structures, high-use areas including roads and high-value areas including private buildings, and homes from future calamitous ruptures that will occur, within a reasonable degree of engineering probability;

(D) The loss of large amounts of water from the initial rupture and from necessary flushing, cleaning, and sanitation operations;

(E) The loss of revenues due to reduced water pressures after the 60-inch diameter pipeline ruptures and during repairs, and also intangible economic loss of revenues and property loss to the Plaintiff, PINELLAS COUNTY; and

(F) Damage to the entire water system of the Plaintiff, PINELLAS COUNTY, in that the losses and the risks incurred as a direct result of the defective transmission lines are not the types of losses and risks normally allocated to the purchaser of this type of product. The 54-inch and 60-inch diameter transmission lines are an integral part of the entire Pinellas County Water System, providing a major or sole source of water to certain areas for fire protection, sanitary services, consumption uses, hygiene uses, and other services vital to the populous of Pinellas County. The likelihood of future major personal injury and property damage is greatly increased by the Plaintiff, PINELLAS COUNTY, not receiving transmission lines built to high standards of quality for a long service life as normally anticipated in the industry, thus jeopardizing the health, safety, and welfare of the customers and residents of Pinellas County.

11. The two pipe ruptures to date have caused other property damage, as enumerated in paragraph 10, supra, in addition to consequential damages, and damages to the pipeline itself and the entire Pinellas County Water System, as the pipeline is an integral part of the entire system and is interconnected to and is interdependent with the entire system. The Defendant, INTERPACE CORPORATION, agreed that its product would meet the Plaintiff's, PINELLAS COUNTY'S, reasonable economic expectations, and although the Plaintiff, PINELLAS COUNTY, relied on the Defendant's, INTERPACE CORPORATION'S, skill and judgment to select and to furnish a suitable product consisting of suitable materials, the Defendant, INTERPACE CORPORATION, did not exercise reasonable care in the design and manufacture of the pipe components, resulting not only in damage to the product itself but also other damage to property. The failure by the Defendant, INTERPACE CORPORATION, to exercise reasonable care in the design and manufacture of the pipe components resulted in the creation of a continuing and worsening condition that is unreason-

ably dangerous to both persons and property and that will, within a reasonable degree of engineering probability, cause future damage to the pipeline and therefore to the entire Pinellas County Water System, in addition to future other property damage to the Plaintiff, PINELLAS COUNTY, and potential future damage to the property of private citizens and personal injury to private citizens and to county personnel, as the pipeline is located adjacent to homes, buildings, and roads in congested Pinellas County, for which the Plaintiff, PINELLAS COUNTY, will be responsible.

Furthermore, the Defendant, INTERPACE CORPORATION, breached the standards of the pipe manufacturing industry and the standards of general custom and usage in the pipe manufacturing industry by its negligent design, manufacture, and marketing of a defective product which is unreasonably dangerous and riddled with latent defects, thereby creating an unreasonable, dangerous condition.

The unreasonably dangerous condition created by the Defendant, INTERPACE CORPORATION, was the proximate cause of two sudden, dangerous, and calamitous pipe ruptures, and the existing unreasonable, dangerous condition will be the proximate cause, within a reasonable degree of engineering probability, of future damage to the pipeline itself, the entire water system, and to other property.

The deteriorating condition of the pipeline components will, within a reasonable degree of engineering probability, result in more future, sudden, dangerous, and calamitous pipe ruptures, which will proximately cause future damages to the pipeline, the water system, and to other property.

The risk of damages to the pipeline and to other property as a result of the knowing creation of an unreasonably dangerous condition by the Defendant, INTERPACE CORPORATION, was reasonably foreseeable to the Defendant, INTERPACE CORPORATION, was hidden to the Plaintiff, PINELLAS COUNTY, and cannot be considered to be a part of any ordinary contractual risk.

12. The Defendant, INTERPACE CORPORATION, carelessly and negligently designed, manufactured, and produced the 60-inch diameter and the 54-inch diameter pipes, pipe fittings, and specials, and negligently and carelessly fell below the standards commensurate in the industry for the design and manufacture of pipes, pipe fittings, and specials in the following respects:

(A) The material parameters used in the design of the pipes were different from and superior to the characteristics of the materials used to fabricate the pipe or, in other words, the materials utilized in the manufacture of the pipe did not meet the design assumptions in that:

(1) The modules of elasticity of the concrete at the time the pipes were prestressed was less than that assumed to compute the initial modular ratio submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the design;

(2) The resultant modulus of elasticity of the concrete assumed to compute the resultant modular ratio submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the design to calculate the losses in concrete prestress, was higher than the resultant modulus of elasticity of the concrete used in the fabrication of the pipe;

(3) The combined modulus of elasticity of the steel cylinder and prestressed wires assumed to compute the initial and resultant modular ratios submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the fabrication of the pipe was higher than the combined modulus assumed in the design;

(4) The creep of the concrete used in the fabrication of the pipe exceeded the concrete creep assumed in the design of the pipe;

(5) The three-edge bearing strength of the pipe did not consistently meet the minimum value assumed in the design calculations;

(6) The creep factor assumed in design was insufficient to compensate properly for actual material properties and/or for the variations in factors affecting the actual behavior of the pipe;

(7) The wire embedment and/or relaxation losses assumed in design were insufficient to compensate properly for actual material properties and/or for the variations in factors affecting the actual behavior of the pipe;

(8) The steel cylinder thickness assumed in the design calculations was less than the value specified and less than the cylinder thickness actually provided, resulting in less prestressing wire being applied to the concrete than necessary to resist the internal pressure; and

(9) The material components of the pipe were chosen, assembled and manufactured so as to result in a final product that failed to meet the pressure at zero core concrete stress, P_0, to achieve the design required by project specifications, and represented as being provided by the Defendant, INTERPACE CORPORATION.

As a direct and proximate result of the use of the incorrect parameters in the design, the Defendant, INTERPACE CORPORATION, provided to the Plaintiff, PINELLAS COUNTY, pipe which was lower in strength; which failed to meet the specified design working pressure of 150 psi and specified design plus surge (water hammer) pressure of 210 psi; and which had less safety factor than represented by the manufacturer, INTERPACE CORPORATION, and required by the specifications for the manufacture of the pipe as specified in Plaintiff's Exhibit "A".

(B) The concrete materials used in the fabrication of the pipe did not meet the specification requirements as contained in Plaintiff's Exhibit "A" in that:

(1) The fine aggregate incorporated in the concrete core and the mortar coating over the prestressed wires was more finely graded than permitted by the specification limits (AWWA C-301-72);

(2) The coarse aggregate incorporated in the concrete contained deleterious substances in the form of minus 200 (-200) mesh sieve material, soft particles, clay lumps, and the combination thereof in excess of the amounts permitted by the specifications limits (AWWA C-301-72);

(3) Chemical admixtures were used in the concrete without the permission or knowledge of the purchaser, Plaintiff, PINELLAS COUNTY, as required by the specifications. The type of admixture and quantity used was changed without notifying the purchaser, Plaintiff, PINELLAS COUNTY;

(4) The mortar coating did not consistently meet the specification requirement (AWWA C-301-72) that

the mortar coating consist of one part cement to three parts fine aggregate;

(5) Mortar was used as the coating material for the subject pipe instead of the specified required concrete coating;

(6) The Defendant, INTERPACE CORPORATION, failed to submit to the Defendant, CH2M HILL SOUTHEAST, INC., the consulting engineers, its test results on materials and the affidavit and certification of compliance with all applicable provisions of the standard as required in AWWA C-301-72, and certifications as required in their contract with the Plaintiff, PINELLAS COUNTY; and

(7) The Defendant, INTERPACE CORPORATION, failed to utilize a mortar mix of sufficient richness to permit a high moisture content for coating placement, and to thereby provide a coating of sufficient quality to protect the prestress wire adequately.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, through the use of nonconforming materials, the concrete used in the fabrication of the pipe did not possess the qualities deemed essential and required by the specifications to ensure adequate performance and durability of the pipe. The use of the admixtures to attempt to compensate for the deficiencies of the materials and procedures used was hidden from the purchaser, Plaintiff, PINELLAS COUNTY, contrary to the requirements of the contract between the Plaintiff, PINELLAS COUNTY, and the Defendant, INTERPACE CORPORATION.

(C) The prestress wire used in the fabrication of the pipe did not meet the specification requirements as contained in Plaintiff's Exhibit "A" or the recognized standards commensurate in the wire drawing industry in that:

(1) The prestress wire consistently failed to meet the specified minimum permissible diameter of 0.1600 inch;

(2) Prestress wire with split seams and serious seams was used in violation of specification requirements (ASTM A-227). Also, wire which was known to be prone to splitting and wire with longitudinal splits was used;

(3) The wire was overdrawn and grossly defective in that it was susceptible to splitting, environmentally assisted crack growth (stress corrosion and hydrogen embrittlement), and pitting, resulting in failure in the environment in which it was known or should have been known that it was going to be exposed and placed into service;

(4) The temperature of the lead quench portion of the patenting furnace was improperly lowered below the minimum acceptable temperature for production of satisfactory patenting rod to increase rod strength and increase the strength of the wire drawn therefrom;

(5) The temperature of the wire was not properly controlled during the wire drawing process and the wire was not cold drawn as required by the project specifications and the applicable national standards, thereby allowing the wire's temperature to rise beyond the maximum allowable temperature for production of satisfactory quality wire, and thereby creating wire that lacked sufficient ductility for its intended purpose;

(6) The rod used to make the prestress wire was of the incorrect dimension and inappropriate quality;

(7) The cleaning and coating of the patented rod, prior to wire drawing, was improper and inadequate, resulting in increased wire drawing temperature, and consequent hydrogen charging and embrittlement of the wire;

(8) The Defendant, INTERPACE CORPORATION, failed to discard rod which had been subjected to stoppage and improper speeds in the lead patenting line, resulting in the use of improperly and defectively patented rod in the manufacture of the wire;

(9) "Class IV", 8-gauge prestressing wire, used throughout the pipe, was wire with a strength and quality not recognized or recommended by any national standards, organization, or published specification. This prestress wire was manufactured and used solely to obtain a cost advantage over competitors;

(10) The development of "Class IV" wire was not done by, or under the supervision of, personnel competent in the field of wire manufacturing or wire metallurgy;

(11) The wire was inadequately tested during its development and manufacture by the Defendant, INTERPACE CORPORATION, by their failure to apply all of the

appropriate tests, including the torsion test, thoroughly and completely; by their failure to explore the properties and performance of the wire fully; by their failure to properly account for all of the stresses in the installed wire which result in excessive relaxation, relative to the design assumptions, resulting in inadequate prestressing of the wire on the pipe; and by their failure to interpret the nature of the results correctly and prudently of the few inadequate tests that were performed;

(12) The equipment used in the wire drawing process was not properly maintained, calibrated, or prepared for use;

(13) The "Class IV" wire was improperly manufactured and drawn in that the Defendant, INTERPACE CORPORATION, used improper wire drawing equipment which had either a 5 or, at best, a 6 drawing die capability, whereas it is metallurgically impossible to make proper "Class IV", 8-gauge wire, especially with 5 or 6 die drawing practice;

(14) During manufacture of the "Class IV" wire and prior to its being sent to the manufacturing plant to be wrapped on the pipe sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE, CORPORATION, failed to stress relieve the "Class IV" wire which it manufactured, in order to make it less susceptible to corrosion. By the Defendant's, INTERPACE CORPORATION'S, failure to stress relieve the "Class IV" wire prior to placing it on the pipe sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE CORPORATION, made the wire much more susceptible to corrosion and thus ultimate failure by failing to utilize the stress relieving process;

(15) The Defendant, INTERPACE CORPORATION, failed to produce wire of proper ductility in that the wire developed serious seams both during and following manufacture. Therefore, non-ductile wire was placed upon the pipe sold to the Plaintiff, PINELLAS COUNTY. The Defendant, INTERPACE CORPORATION, further failed to perform any torsion test in the development and manufacturing stages of production of the wire, which if performed would have shown that the wire did not pass the torsion test and therefore was not ductile and should not have been used in the manufacture of prestressed concrete pipe sold to the Plaintiff, PINELLAS COUNTY;

(16) During the manufacture of the pipe sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE CORPORATION, wrapped the prestress wire at stress levels above the elastic limit of the wire. Due to the extremely high and deleterious wire temperatures permitted during wire manufacturing, this caused the wire to go into relaxation more than calculated in design, and thereby lowered the P_O of the pipe, thus producing pipe with lower working pressure and surge pressure than calculated in design;

(17) The Defendant, INTERPACE CORPORATION, manufactured and produced "Class IV" wire which was placed on pipe sold to the Plaintiff, PINELLAS COUNTY, and which had the characteristic of tending to produce "star fractures" with longitudinal splitting in the fracture surface. This type of fracture is recognized in the wire-making industry as an indication of defective and brittle wire. Therefore, the Defendant, INTERPACE CORPORATION, failed to place properly manufactured wire on the pipe sold to the Plaintiff, PINELLAS COUNTY, and, instead, furnished wire containing longitudinal seams and planes of weakness which, when subjected to environmental conditions not sufficiently severe to cause pitting, nonetheless produced stress corrosion cracking and hydrogen embrittlement in the defective wire furnished by the Defendant, INTERPACE CORPORATION;

(18) The fact that the Defendant, INTERPACE CORPORATION, produced defective "Class IV" wire in each and every pipe sold to the Plaintiff, PINELLAS COUNTY, and that such defects require a total replacement of the pipeline sold to the Plaintiff, PINELLAS COUNTY, by the Defendant, INTERPACE CORPORATION, is demonstrated by the fact that there have been numerous pipe failures in pipe containing defective "Class IV" wire and other manufacturing defects as alleged in this Amended Complaint. These pipe failures throughout the country on other pipe sold to other customers by the Defendant, INTERPACE CORPORATION, demonstrate that "Class IV" wire constitutes an inherent latent defect and prove, with a reasonable degree of engineering probability, that the pipeline sold to the Plaintiff, PINELLAS COUNTY, will prematurely fail;

(19) The Defendant, INTERPACE CORPORATION, failed to provide wire test specimens and other steel test specimens to the Defendant, CH2M HILL SOUTHEAST, INC., as

equired by the contract specifications contained in Plaintiff's xhibit "A" and by Section 1.9 of AWWA C-301-72, the applicable ational standard;

(20) The Defendant, INTERPACE CORPO-ATION, failed in general to meet the requirements of Section 1.8 f AWWA C-301-72, requiring the manufacturer to perform all ork in a thorough, workmanlike manner, using mechanics skilled their various trades as evidenced, among many examples, by orroded wire, over-heated wire, wire that failed the torsion test, ire that is extremely sensitive to hydrogen embrittlement and tress corrosion cracking, split wire, brittle wire, wire with seams, usty wire, and non-ductile wire; and

(21) Before commencing commercial pro-luction of prestressed concrete embedded cylinder pipe incorpo-ating "Class IV" wire, the Defendant, INTERPACE CORPORA-ION, failed to investigate sufficiently and conduct adequate pre-iminary testing on "Class IV" wire, and pipes incorporating "Class V" wire. Furthermore, the Defendant, INTERPACE CORPORA-ION, withheld information developed by the Defendant, INTER-PACE CORPORATION, which indicated inferior performance of ipe manufactured using "Class IV" wire in lieu of acceptable wire manufactured pursuant to published material standards.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, the subject pipeline's prestress wire is so defective, and its safety factor against failure is so continuously being reduced, that the pipeline is unreliable, will continue to fail prematurely in service, and constitutes a hazard to the community and surrounding areas and to the health, safety, and welfare of community residents where it is located.

(D) The procedures used to manufacture the pipe were not in accordance with the requirements of the specifications contained in Plaintiff's Exhibit "A" in that:

(1) Pipe cores were not cured as required by the specifications (AWWA C-301-72). Cores were "tipped" from their bases and removed to a storage yard prior to 32 hours age. Water spraying was haphazard and only portions of the cores were kept moist for the required curing period;

(2) Water curing of the mortar coating was not maintained for four (4) days as required by the specifica-

tions (AWWA C-301-72). Pipes were prematurely removed from curing and stored in open yard subject to drying and shrinkage;

(3) The minimum clear distance between prestress wires was not maintained at all times, resulting in adjacent wires touching, thereby creating voids which could not be filled with protective slurry or mortar;

(4) Defective concrete and mortar were not removed to the extent necessary to ensure the quality of the pipe;

(5) Repairs were made to the pipe using materials having different constituents, consistencies, and qualities from those required by the specifications contained in Plaintiff's Exhibit "A";

(6) Work was not performed in a workmanlike manner by properly trained employees and mechanics skilled in their trade;

(7) The precast concrete cores consistently failed to meet the specified minimum core thickness;

(8) The coating consistently failed to meet the specified 7/8-inch minimum coating thickness;

(9) Pipe was improperly handled during manufacture by allowing unwrapped or wrapped pipe to be contaminated with mud, soil, or clay, resulting in inclusions of mud, soil, or clay between the wires and beneath the coating;

(10) Wire splices found on individual pipes were of such frequency that some of the pipes had to have been produced with four or more separate sections of wire, providing clear evidence as to the poor quality of the wire at the time of wire wrapping;

(11) Pipe coating was not properly deposited and consolidated to produce a dense, durable wire encasement as required by the specifications (AWWA C-301-72). Failure to consolidate the coating properly and sufficiently created a non-uniform coating with a zone of high porosity and low cement paste content at the prestress wire level and beneath wire haunches, thereby failing to protect the wire adequately from corrosion;

(12) Inadequate welding practices were used in welding of the steel cylinders, resulting in the probability of cylinder leakage, and corrosion and embrittlement of the prestress wire; and

(13) Total or partial lack of quality control existed at the plant, so that important phases of the pipe's manufacture were uncontrolled and inadequate, resulting in the manufacture of substandard pipe which will ultimately and prematurely fail in service.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, and because of the deficiencies hereinabove alleged, the concrete pipe produced were of variable and uncertain quality resulting in imperfections and weak areas in unknown locations, subject to environmentally induced wire corrosion and embrittlement, excessive stresses, reduced safety factors, reduced durability, and premature pipe failure.

(E) The equipment used to fabricate the pipe was not properly maintained, calibrated, or prepared for use. In addition, the Defendant, INTERPACE CORPORATION, was careless and negligent in that:

(1) Welding rods used to fabricate the steel cylinders were not maintained in adequately heated dry storage as recommended by the rod manufacturer to ensure satisfactory welds;

(2) Molds were not thoroughly cleaned before each use as required by the specifications (AWWA C-301-72) resulting in imperfect concrete surfaces with numerous voids;

(3) Molds were not properly assembled and sealed which produced cores that have irregularities and offsets in the surface at the mold gates, variable wall thickness, thin on one side, and eccentrically positioned cylinders within the core, resulting in stresses within the pipe greater than those for which it was designed; and

(4) Application of the cement slurry prior to coating the prestress wire was erratic and insufficient, resulting in areas throughout the pipeline which are highly susceptible to corrosion of the prestress wire. Specifically, the slurry was of improper consistency. Also, the slurry application was erratic or non-existent, and was insufficient beneath the wire haunches, in the area where the wire contacts the precast concrete core, and on the remaining wire surface areas. This deficient application of slurry has subsequently failed to provide a protective environment for the wire, resulting in rapid corrosion, including embrittlement, of

the prestressed wire and premature ultimate failure.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, and as a consequence of the above-described deficiencies, the pipeline was supplied with less strength, capacity, and durability than required by the specifications as contained in Plaintiff's Exhibit "A".

(F) The quality control exercised during production of the pipe was inadequate to ensure pipes were produced in accordance with the specification requirements. As a result of these actions, the Defendant, INTERPACE CORPORATION, was careless and negligent in the following additional respects:

(1) The personnel conducting the quality control tests required by the specifications were not qualified or adequately trained;

(2) The quality control tests performed were not made in accordance with the ASTM methods cited in the specifications as required by Plaintiff's Exhibit "A";

(3) Inadequate personnel were employed to assure product conformance with the specifications in all respects;

(4) The quality control program used was inadequate to ensure that pipes conforming to the specifications or that pipes undamaged during the manufacturing process were supplied;

(5) The pipe was manufactured and cured using materials and practices which resulted in carbonation of precast core concrete paste at and beneath the surface upon which the prestress wire was subsequently wrapped, thereby lowering the pH and eliminating the protection of the wire provided by high alkalinity, resulting in corrosion of the prestress wire and ultimate failure;

(6) The pipe was manufactured with coating material containing debris, stones, chunks of hardened concrete, and pockets and lenses of sand unmixed with cement, resulting in inadequate protection of the wire from corrosion;

(7) Prestress wire and coating were applied to precast concrete surfaces contaminated with dirt, oil, and mud, and which concrete surfaces contained numerous unfilled voids, resulting in poor bond of the coating to the core and inadequate protection of the wire from corrosion;

(8) The pipe was manufactured with mortar coating of varying and uncontrolled consistency and moisture content, and was mishandled during manufacturing, resulting in non-uniform coating with zones of high porosity, delaminated coating, cracked coating, coating containing holes and voids, coating prone to excessive shrinkage and shrinkage cracking, and coating with inconsistent and poor bonding properties;

(9) The pipe was manufactured with steel cylinders which were not uniformly round or concentrically positioned, as required by the project specifications, resulting in variable and unknown core concrete stress distributions and the inability to install pipe tapping assemblies dependably;

(10) The pipe was manufactured with prestress wire which was improperly stored, poorly protected from the weather, and, as a result, corroded at the time of pipe manufacture; and

(11) The Defendant, INTERPACE CORPORATION, failed to inspect the pipe properly prior to shipping to guard against coating drumminess and separation of the coating from the joint rings or the core;

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove described, the above-described deficiencies resulted in the delivery of a pipeline which did not conform to the specification requirements and had imperfections making it susceptible to deterioration and corrosion of the prestressed wires leading ultimately to failure.

(G) The field repairs conducted by the Defendant, INTERPACE CORPORATION, of damaged pipe were made under the supervision of the manufacturer's representative and were not adequate to prevent corrosion of the prestress wire.

(H) Accelerated corrosion tests were done on "Class IV", 8-gauge prestress wire, the results of which indicated poor performance of such wire relative to the other classes of wire in the categories of stress corrosion cracking and pitting corrosion. These significant results and information were withheld by the Defendant, INTERPACE CORPORATION, from consulting engineers and customers.

(I) Tests on the coating of experimental pipe manufactured with "Class IV" prestress wire were done, the results

of which indicated poor coating cracking performance. These significant test results and information were withheld by the Defendant, INTERPACE CORPORATION, from consulting engineers and customers.

(J) The Defendant, INTERPACE CORPORATION, failed to protect properly the prestress wire incorporated into the subject pipe in that:

(1) Said wire was placed upon carbonated precast concrete cores. Carbonated concrete cores create an environment under the prestress wire which fails to provide uniform and sufficient alkalinity to protect the wire, thus violating one of the fundamental assumptions of prestressed concrete pipe development, and thereby resulting in corrosion of the corrosion-susceptible "Class IV", 8-gauge prestress wire and ultimate failure;

(2) The Defendant, INTERPACE CORPORATION, placed rusty, corroded, or corrosion-pitted wire on the pipe, thereby creating a concealed condition in manufacture, wherein the wire corrosion process was already initiated at the time of pipe manufacture, thereby making the entire pipeline much more susceptible to failure;

(3) The Defendant, INTERPACE CORPORATION, failed to require a slurry coating on the wire just before wrapping the pipe to eliminate wire corrosion at the interface of the wire and the precast concrete core; and

(4) Furthermore, application of the cement slurry following prestressing was erratic, insufficient or nonexistent, and of improper consistency beneath the wire haunches in the area where the wire contacts the precast concrete core, and on the remaining wire surfaces.

As a consequence, the prestress wire has undergone continued rapid corrosion, including embrittlement, resulting in premature, ultimate failure.

(K) The Defendant, INTERPACE CORPORATION, had written intercompany procedures, known as Manufacturing Procedures (MP's), Testing Procedures (TP's), Material Specifications (MSP's), and Operations Circulars (OC's), which set forth the company's own standards to be met and followed during the manufacturing and testing of the pipe. In addition, a manual of quality control procedures was published for use within the company setting forth what were known to be, based

pon experience and prudent engineering, minimum standards to e followed to ensure a quality product. These intercompany pro-edures and manuals reflect, in part, some evidence of the standard f care to which a reasonable manufacturer of prestressed concrete ipe should be held. These manuals were not consistently fol-owed nor adhered to, resulting in an inferior, defective pipe of a uality and durability substantially less than could have been the ase had these manuals been followed, and substantially less than he Plaintiff, PINELLAS COUNTY, had bargained for in retaining a ationally known prestressed concrete pipe manufacturer.

(L) The Defendant, INTERPACE CORPORA-ION, failed in general to make pipe according to the specifications n Plaintiff's Exhibit "A", including AWWA C-301-72.

13. Properly manufactured pipe which was to be deliv-ered by the Defendant, INTERPACE CORPORATION, to the Plaintiff, PINELLAS COUNTY, was advertised or represented by he Defendant, INTERPACE CORPORATION, to last for 100 years nd, in fact, if properly designed and manufactured, should or would last indefinitely. The pipe, and as a result the pipelines, namely the 60-inch diameter and 54-inch diameter transmission lines, designed and manufactured by the Defendant, INTERPACE CORPORATION, are inherently defective with defects as herein-above alleged which were latent and undiscoverable by the Plaintiff, PINELLAS COUNTY, unless the pipe itself was inspected through destruction of the pipe thus rendering it useless for service in the pipeline. As a result of the construction, design, and manu-facture of the above-described latent defects, the Plaintiff, PINEL-LAS COUNTY, was unaware of the existence of said latent defects until, through its lengthy and scientific investigation, the determi-nation and existence of said latent defects in its transmission lines became known to the Plaintiff, PINELLAS COUNTY the 3rd day of September, 1980, when at said time, the Plaintiff, PINELLAS COUNTY, placed the Defendant, INTERPACE CORPORATION, on notice of its responsibilities for furnishing the Plaintiff defective pipelines. Said latent defects were not discoverable through rea-sonable diligence of the Plaintiff, PINELLAS COUNTY, until said date because said latent defects could only be discoverable by destruction of the pipe itself. The fact that other INTERPACE CORPORATION pipeline failures occurred throughout the country involving INTERPACE CORPORATION pipes with "Class IV", 8-

gauge wire put INTERPACE CORPORATION on notice of a severe problem with "Class IV", 8-gauge wire, and other problems with pipe material components and design defects, before the manufacture of the Plaintiff's, PINELLAS COUNTY'S, pipeline. Nevertheless, the Defendant, INTERPACE CORPORATION, manufactured the Plaintiff's, PINELLAS COUNTY'S, pipeline using defective material that created dangerous latent defects in the pipeline.

The fact that other failures of the Defendant's, INTERPACE CORPORATION'S, pipelines have continued, and are continuing, throughout the country indicates that the Defendant, INTERPACE CORPORATION, created a dangerous latent condition in the manufacture of the Plaintiff's, PINELLAS COUNTY'S, pipeline.

As hereinabove alleged, the pipeline is an indispensable main artery and an integral part of the entire Pinellas County Water System and cannot be taken out of service for any substantial length of time. Consequently, the Plaintiff, PINELLAS COUNTY, can only periodically examine sections of the pipeline during periods of low demand when service may be temporarily interrupted through said pipelines.

14. As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars in that the Plaintiff, PINELLAS COUNTY, has had to repair damage to the pipeline itself and other resulting property damage from the two calamitous ruptures to date; will be required to repair all potential future damages to the pipeline and to other property resulting from the unreasonably dangerous condition created by the Defendant, INTERPACE CORPORATION; will be required to replace the entire 60-inch diameter and the 54-inch diameter transmission lines; will be required in the replacement of said lines to design, acquire, and provide to its water system all materials needed for the construction of said pipelines, which includes but is not limited to surveying and engineering services; testing; supervision, inspection of manufacturing, construction, and inspection of construction; acquiring materials, including new pipe, fittings, specials, valves, and appurtenances; the acquisition of new easements and rights-of ways; the acquisition of temporary construction easements; the removal, disposal, and backfilling of the existing defec-

tive pipeline; road and utility repair; reimbursement of costs to other utilities; work tasks performed by Pinellas County personnel and equipment; administration; and all associated labor, materials, equipment, and costs. In addition thereto, the Plaintiff, PINELLAS COUNTY, has been damaged in that it has been required to incur expenses in costs of inspection and testing of its pipeline to determine the existence of the defects and has been required to hire the services of consulting engineers for said purposes together with other experts, all of which damages exceed the sum of Sixteen Million Dollars.

...

COUNT IX
NEGLIGENCE AGAINST CH2M HILL SOUTHEAST, INC.

Plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the Defendant, CH2M HILL SOUTHEAST, INC., and avers:

63. Plaintiff, PINELLAS COUNTY, realleges and reavers its allegations contained in Paragraphs 1 through 14, Count I, above.

64. At all times material to this Complaint, Defendant, CH2M HILL SOUTHEAST, INC., is a Florida corporation formerly known as Black, Crow and Eidsness, Inc., who changed its corporate name to CH2M HILL SOUTHEAST, INC. and who is an engineering company organized and existing under the laws of the State of Florida, and is engaged in the engineering profession.

65. The Defendant, CH2M HILL SOUTHEAST, INC., in consideration of the payment of $292,211.16, which was 4.5 percent (%) of the total estimated construction costs of the project, provided final design plans and specifications pursuant to and under the terms of the contract between the Plaintiff, PINELLAS COUNTY, and Defendant, CH2M HILL SOUTHEAST, INC., Plaintiff's Exhibit "B". In addition, the Defendant provided construction supervision for an additional compensation of $72,728.11 which represents 1.12 percent (%) of the estimated construction costs.

66. The Defendant, CH2M HILL SOUTHEAST, INC., carelessly and negligently performed its duties owed to the Plaintiff, PINELLAS COUNTY, under their contract, Plaintiff's Exhibit "B", in the following manner:

(A) Failed to direct properly, to perform, or to have performed soil survey investigations including, but not limited to, soil resistance to the flow of electric current, total soil acidity, soil drainage (groundwater fluctuation), soil texture, soil microbial activity, and soil chemistry; and failed to direct properly, to perform, or to have performed a corrosion testing program to determine the effects of the aforementioned local soil corrosion conditions on the rate of corrosion of prestressed steel wire embedded in mortar. As a direct result of such failure, the pipeline has been exposed to detrimental soil and groundwater conditions resulting in, but not limited to, a deterioration of and damage to the pipe mortar coating and the prestressed wire;

(B) Failed to direct properly, to perform, or to have performed investigations of the pipeline route for stray electrical currents, low soil resistitivities, and aggressive soil and groundwater conditions; failed to design the pipeline to prevent damage by electrolytic currents and stray electrical currents; and failed to consider in the design of the pipeline the effect of overhead voltage lines or any other sources of stray electrical currents on the structural integrity of the prestressed wires and, consequently, the entire pipeline. As a result, electrolytic currents and stray electrical currents have produced damages in, but not limited to, pipeline prestressed wires;

(C) Failed to prepare and review specifications properly for pipe manufacture by approving pipe manufactured with "Class IV" wire when, in fact, there were no recognized specifications which existed providing for such wire; by allowing specifications that did not require the wire to be ductile; by approving pipe designed with inadequate safety factors; by failing to review design calculations for the individual sections of pipe; by allowing the Defendant, INTERPACE CORPORATION, to specify ASTM A-648-73, which is not recognized nor sanctioned in AWWA C-301-72, and furthermore, the provided "Class IV" wire is not recognized nor sanctioned by ASTM A-648-73; by approving the use of 17-gauge cylinder steel instead of the specified 16-gauge cylinder steel; and by specifying only the absolute minimum standards and specifications, thereby permitting defective pipe to be made. Furthermore, the Defendant, CH2M HILL SOUTHEAST, INC., agreed to review all project documents submitted to the Plaintiff, PINELLAS COUNTY, from the Defendant, INTERPACE CORPORATION, but subsequently failed to review such documents;

(D) Failed to specify, to perform, or to have performed, sufficient inspection and testing of materials used in the manufacture of the pipe to ensure the pipe would be manufactured and delivered as required by the specifications; failed to inquire of the Defendant, INTERPACE CORPORATION, of the use of admixtures that were used in the manufacture of the pipe, and by having no knowledge of the use of admixtures failed to approve, or to inspect the use of, admixtures; failed to require the Defendant, INTERPACE CORPORATION, to perform any additional tests not specifically mentioned in the standards and specifications, but necessary to ensure the quality and safety of the manufactured pipe; and failed to require that test results of the pipe manufacturing contractor and affidavits or certifications of compliance by the pipe manufacturing contractor be supplied for review as directed in the INTERPACE CORPORATION contract and AWWA specifications. As a result, materials were used in the manufacture of the pipe, and manufactured pipe was provided, which did not meet specification requirements;

(E) Certified completion of the project to the Plaintiff, PINELLAS COUNTY, without receiving affidavits and certifications of compliance. As a result of this negligence, the Plaintiff, PINELLAS COUNTY, was misled into believing that the pipeline was manufactured using materials and practices which complied in all respects with the standards and specifications;

(F) Failed to specify, to direct, to perform, or to have performed, adequate quality control tests on the manufactured pipe, which negligence included, but is not limited to, failure to detect that the pipe was being manufactured with materials which did not meet the design assumptions or the project specifications; failure to detect that the pipe was being manufactured with wire which contained serious seams and which was grossly susceptible to pitting, hydrogen embrittlement, and stress corrosion cracking as a result of defects formed during manufacture, that molds or forms were not correctly aligned during concrete pouring operations resulting in the cores of the pipes not meeting specified thicknesses, thereby causing stresses within the pipe greater than those for which it was designed, and failure to detect that the coating did not, in all cases, meet specified minimum thickness and composition requirements; failure to detect improper consolidation and non-uniformity of the coating; failure to detect that the mortar coat-

ing was being damaged and was separating during the manufacturing operation; failure to detect inadequate curing; failure to detect contamination of coating materials and precast cores; failure to detect defective coating patches; failure to detect insufficient core thicknesses and out-of-round steel cylinders; failure to detect improper cylinder welding procedures; failure to detect improperly stored corroded wire; failure to detect delaminated coating; failure to detect carbonation of the concrete cores, failure to detect non-uniform slurry application; and failure to detect that application of the cement slurry prior to the coating of the prestress wire was erratic, resulting in areas of unknown location throughout the pipeline which are highly susceptible to corrosion of the prestress wires and which have reduced safety factors, reduced durability, and which will ultimately lead to premature failure of the pipeline;

(G) Failed to provide proper inspection of the subject pipe during its production at the manufacturer's plant in Lacoochee and failed to detect the generally inadequate and negligent quality control situation at the pipe manufacturing plant. Furthermore, the Defendant, CH2M HILL SOUTHEAST, INC., failed to advise the Plaintiff, PINELLAS COUNTY, of the need for part-time or full-time in-plant inspections during the time the pipe was manufactured, and further failed to advise the Plaintiff, PINELLAS COUNTY, of the need to provide funds for these in-plant inspections;

(H) Failed to specify acceptance inspection procedures adequate to identify defective pipe. In addition thereto, the Defendant, CH2M HILL SOUTHEAST, INC., failed to inspect the work properly; failed to identify incorrect pipe loading and unloading techniques; failed to require the Defendant, INTERPACE CORPORATION, to provide samples and specimens of pipe manufacturing materials as provided for in the standards and specifications; failed to examine and test said material samples and specimens; and failed to require the Defendant, INTERPACE CORPORATION, to provide an affidavit and certification of compliance at the end of the project;

(I) Failed to require proper repairs to pipe damaged during transportation or installation;

(J) Failed to investigate "Class IV", 8-gauge wire sufficiently before approving of such wire to be used in the manufacture of the subject pipeline; failed to review available test data

for "Class IV", 8-gauge wire or to contact competent wire manufacturers; and failed in permitting the use of "Class IV", 8-gauge wire, failed to require said wire to undergo adequate testing, including torsion testing, hydrogen embrittlement testing, and stress corrosion cracking testing, before acceptance;

(K) Failed to detect that the pipe coating material was mortar rather than concrete as required in the specification;

(L) Failed in their design of the system to provide for sufficient flexibility which would allow the Plaintiff, PINELLAS COUNTY, to operate the subject pipeline in the future at working pressures up to 150 psi which may be needed for future water system operation;

(M) Failed to design the system to include a sufficient surge pressure margin or surge protection facilities adequate for the surges to which the pipeline is being, and will be, subjected during its operation;

(N) Failed to design the surge protection facilities properly which were provided. Specifically, of those air and vacuum valve assemblies which were specified and installed, the design was such that, when installed, many of the assemblies were flooded by groundwater and surface water. This rendered them unsuitable for the use intended, of mitigating surges and protecting the pipeline against water hammer damage. Furthermore, this endangered the health and safety of the Plaintiff's customers by exposing them to the probability that polluted water would be drawn into the potable water system and supplied to the Plaintiff's customers. As an additional result, the Plaintiff, PINELLAS COUNTY, suffered the added expense and inconvenience of redesigning and reinstalling said air and vacuum valves above ground so as not to be affected by the groundwater table and surface runoff waters;

(O) Failed to take into consideration and to design to prevent the probability that surges would be induced in the pipeline due to the operation and interaction between the Cypress Creek Pump Station, S.K. Keller Pump Station, and North Booster Station; all three stations, plus the interconnecting piping, having been designed by the Defendant, CH2M HILL SOUTHEAST, INC., prior to the design of the pipeline; failed to forewarn the Plaintiff, PINELLAS COUNTY, that the operation, or modification to operation, of pumps; motors, drives, valves, actuators, and other appurtenances in the above-mentioned pump stations, when

acting individually or together, could result in damaging surges being introduced into the pipeline; and failed to design, recommend, or advise as to the need for instrumentation to monitor for surges which could damage said pipeline, and which could be produced by the operation or interaction between these three pump stations;

(P) Failed in drafting the PINELLAS COUNTY/INTERPACE CORPORATION contract, which was ultimately signed, to require the Defendant, INTERPACE CORPORATION, to provide all test results as required to be performed under AWWA C-301-72; failed to require an affidavit and certification of compliance as provided for in AWWA C-301-72; failed to provide provisions in the contract that would give a sufficient warranty period by specifying only a one-year warranty period; and failed to provide a proper protection clause and recourse against the Defendant, INTERPACE CORPORATION, in the event that a defective product was supplied;

(Q) Failed to inform the Plaintiff, PINELLAS COUNTY, of its knowledge and understanding that the pipeline would only be expected to last approximately fifty years, while the Defendant, INTERPACE CORPORATION, consistently maintained the pipeline would last either indefinitely or at least one hundred (100) years;

(R) Failed to exercise due care in reviewing submittals from the Defendant, INTERPACE CORPORATION, which submittals described the prestressed concrete pressure pipe the Defendant, INTERPACE CORPORATION, intended to manufacture. By its failure to properly review these submittals, the Defendant, CH2M HILL, SOUTHEAST, INC., allowed the Defendant, INTERPACE CORPORATION, to manufacture a lesser quality pipe than was called for in the specifications. In so doing, the Defendant, CH2M HILL SOUTHEAST, INC., negligently failed to discharge its obligation to require the Defendant, INTERPACE CORPORATION, be held to the strict standards called for, and thereby failed to discharge its responsibility to the Plaintiff, PINELLAS COUNTY;

(S) Failed to reject shop drawings submitted by the pipe manufacturer, Defendant, INTERPACE CORPORATION, which included the specification of ASTM 648-73 which in turn permitted, or in the alternative, is claimed to have permitted by

Defendant, INTERPACE CORPORATION, the use of "Class IV" wire since the specification of ASTM 648-73 does not include within its specification an upper tensile limit for Class III wire. In turn, the Defendant engineer was permitting the use of a class of wire not provided in the original specifications and contracts and a class of wire which was totally different in kind than Class III wire, with a higher tensile strength than contemplated by the standard which sanctioned Class III wire; and

(T) Failed to require the Defendant, INTERPACE CORPORATION, to meet the requirements of the contract specifications contained in Plaintiff's Exhibit "A" and in Section 1.9 of AWWA C-301-72, requiring the provision of wire test specimens and other steel test specimens to the purchaser or its agent.

67. As a direct and proximate result of the negligence of the Defendant, CH2M HILL SOUTHEAST, INC., the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in Paragraph 14.

COUNT X
BREACH OF CONTRACT OF CH2M HILL SOUTHEAST, INC.

68. The Plaintiff, PINELLAS COUNTY, realleges and reavers Paragraphs 1 through 14, Count I, above.

69. The Plaintiff, PINELLAS COUNTY, realleges and reavers Paragraphs 64 through 67, inclusive, Count IX, above.

70. The Defendant, CH2M HILL SOUTHEAST, INC., breached its contract with the Plaintiff, PINELLAS COUNTY, in the manner described in Paragraph 66.

71. The Plaintiff, PINELLAS COUNTY, has performed all conditions precedent required under the contract, Plaintiff's Exhibit "B".

72. As a direct and proximate result of the breach of contract by the Defendant, CH2M HILL SOUTHEAST, INC., the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in Paragraph 14.

WHEREFORE, the Plaintiff, PINELLAS COUNTY, sues the Defendant, CH2M HILL SOUTHEAST, INC., for damages in a sum in excess of Sixteen Million Dollars plus prejudgment interest and costs of this action.

JOHN T. ALLEN, JR., of
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273
Attorney for Plaintiff,
PINELLAS COUNTY
SPN00039379
Florida Bar #1284

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail hand-delivery to G. LEE GARRETT, JR., ESQUIRE, 3300 First Atlanta Tower, Atlanta, Georgia, 30383; by U.S. Mail to: / STEPHEN BULL, ESQUIRE, Suite 1200, 111 North Orange Avenue, Orlando, Florida, 32801; by hand-delivery to: JEFFREY S. O'BRIEN, ESQUIRE, P.O. Box 3542, St. Petersburg, Florida 33731; and /by U.S. Mail to: MICHAEL J. KEANE, ESQUIRE, P.O. Box 31687, St. Petersburg, Florida 33732-1687 this 25th day of May, 1988.

JOHN T. ALLEN, JR., of
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273
Attorney for Plaintiff/
PINELLAS COUNTY
SPN00039379
Florida Bar #1284

APPENDIX N

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND
FOR PINELLAS COUNTY, FLORIDA

CASE NO: 83-13313-8

PINELLAS COUNTY, FLORIDA

Plaintiff,

vs.

INTERPACE CORPORATION and
CH2M HILL SOUTHEAST, INC.,

Defendants.

MOTION TO STRIKE ALLEGATIONS IN PLAINTIFF'S
FIRST AMENDED COMPLAINT

COMES NOW the Defendant, CH2M HILL SOUTHEAST, INC., by and through its undersigned attorneys, and moves to strike allegations in the Plaintiff's First Amended Complaint, and as grounds therefore would show unto the Court the following:

1. The following phrases should be stricken from paragraph 5(b) of the Plaintiff's First Amended Complaint:

a. "The investigation of above-ground and below-ground chemical, physical, soil, ground water and electrical conditions and their potential effects on the materials selected for the component parts of the pipeline;"

b. "and to require special examination or testing of the work."

Phrase "a" above should be stricken because under Item D(2) of CH2M Hill's contract with the Plaintiff, such services were to be

provided by CH2M Hill only if authorized in writing by the Plaintiff to perform those services; however, no such written authorization was ever given to CH2M Hill by the Plaintiff. Phrase "b" above should be stricken from the Plaintiff's First Amended Complaint because in the last paragraph of Item B of CH2M Hill's contract with the Plaintiff, the duty to test materials is specifically excluded from CH2M Hill's obligations.

2. All of the allegations in paragraph 66(A) of the Plaintiff's First Amended Complaint should be stricken because the allegations refer to the failure of CH2M Hill to provide soil engineering services which under Item D(2) of CH2M Hill's contract with the Plaintiff are to be provided by CH2M Hill only if authorized in writing by the Plaintiff. However, the Plaintiff never gave CH2M Hill written authorization to perform such services.

3. All references to CH2M Hill's failure to perform, have performed, or direct properly any type of soil testing, should be stricken from paragraph 66(B) of the Plaintiff's First Amended Complaint. Under Item D(2) of CH2M Hill's contract with the Plaintiff, such services were to be provided by CH2M Hill only if authorized in writing by the Plaintiff; however, the Plaintiff never gave CH2M Hill written authorization to perform such services.

4. All references to CH2M Hill's failure to test, or to have tested, materials should be stricken from paragraph 66(D) of the Plaintiff's First Amended Complaint pursuant to the last paragraph of Item B of CH2M Hill's contract with the plaintiff which specifically excludes the testing of materials from CH2M Hill's obligations.

5. All allegations in paragraph 66(F) of the Plaintiff's First Amended Complaint should be stricken because the allegations are based upon CH2M Hill's failure to test the materials. Under the last paragraph of Item B of CH2M Hill's contract with the Plaintiff, the duty to test materials is specifically excluded from CH2M Hill's obligations.

6. All allegations in paragraph 66(G) of the Plaintiff's First Amended Complaint should be stricken because the allegations refer to CH2M Hill's failure to inspect the pipe during its production at the manufacturer's plant and its failure to advise the Plaintiff of the need for in-plant inspections. However, CH2M Hill had no contractual obligation to perform, or was not authorized to perform, any such services.

7. All allegations in paragraphs 66(H) of the Plaintiff's First Amended Complaint which refer to CH2M Hill's failure to inspect the work, to identify incorrect work, or to test materials should be stricken. Under the last paragraph of Item "B" in CH2M Hill's contract with the Plaintiff, CH2M Hill's obligation to test the materials is specifically excluded. Under Item "C" of CH2M Hill's contract with the Plaintiff, CH2M Hill was required to make on-site observations of the work and progress and field checks of materials and equipment only if authorized in writing by the Plaintiff; however, the Plaintiff never gave CH2M Hill such written authorization.

8. All allegations in paragraph 66(I) of the Plaintiff's First Amended Complaint should be stricken because the allegations are based upon CH2M Hill's failure to make field checks of materials. Under Item C of CH2M Hill's contract with the Plaintiff, CH2M Hill was to provide such services only if authorized in writing by the Plaintiff. However, the Plaintiff never gave CH2M Hill such written authorization.

9. All allegations in paragraph 66(K) of the Plaintiff's First Amended Complaint should be stricken because the allegations are based upon CH2M Hill's failure to test the materials. Under the last paragraph of Item B of CH2M Hill's contract with the Plaintiff, the duty to test materials is specifically excluded from CH2M Hill's obligations.

WHEREFORE, the Defendant, CH2M Hill, respectfully requests that this Court enter an Order striking the above-mentioned matters from the Plaintiff's First Amended Complaint.

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail this 8th day of September, 1988, to JOHN T. ALLEN, JR., ESQ., 4508 Central Avenue, St. Petersburg, FL 33711; G. LEE GARRETT, JR., ESQ., 3300 First Atlanta Tower, Atlanta, GA 30383; JEFFREY S. O'BRIEN, ESQ., P.O. Box 3542, St. Petersburg, FL 33731; and MICHAEL J. KEANE, ESQ., P.O. Box 31687, St. Petersburg, FL 33732.

STEPHEN A. BULL
BULL AND MIZE
Suite 1200
111 N. Orange Avenue
Orlando, FL 32801
(407) 843-5291
Attorneys for Defendant
CH2MM Hill Southeast, Inc.

SAB/lkr
108-024

APPENDIX O

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

CIRCUIT CIVIL NO. 83-13313-08

PINELLAS COUNTY,

Plaintiff,

-vs-

INTERPACE CORPORATION and
CH2M HILL SOUTHEAST, INC.,

Defendants.

_____/

ORDER ON DEFENDANT, CH2M HILL'S MOTION TO STRIKE ALLEGATIONS IN PLAINTIFF'S FIRST AMENDED COMPLAINT

THIS CAUSE came on to be heard on the Motion to Strike Allegations in Plaintiff's First Amended Complaint, and the Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that

1. The Motion to Strike is hereby denied.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 16 day of October, 1988.

/s/ FRED L. BRYSON
Circuit Court Judge

Copies Furnished To:

John T. Allen, Jr., Esquire
Michael J. Keane, Esquire
Jeffrey S. O'Brien, Esquire
G. Lee Garrett, Jr., Esquire
Stephen M. Bull, Esquire
John R. Bush, Esquire

APPENDIX P

(SEAL OMITTED)

CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
STATE OF FLORIDA

FRED L. BRYSON
CIRCUIT JUDGE

PINELLAS COUNTY JUDICIAL BUILDING
545 FIRST AVENUE NORTH
ST. PETERSBURG, FLORIDA 33701
TELEPHONE (813) 892-7733

September 26, 1989

John T. Allen, Jr., Esq.
4508 Central Avenue
St. Petersburg, FL 33711

Michael J. Keane, Esq.
P.O. Box 31687
St. Petersburg, Fl 33732-1687

G. Lee Garrett, Jr., Esq.
Jones, Day, Reavis & Pogue
33rd Floor, First Atlanta Tower
Atlanta, GA 30383-3101

Jeffrey S. O'Brien, Esq.
P.O. Box 31517
St. Petersburg, FL 33732-1517

Stephen M. Bull, Esq.
Bull and Mize
111 No. Orange Avenue
Suite1200
Orlando, FL 32801

Re: Pinellas County vs. Interpace Corp. et al.

Gentlemen:

Please be advised that Motions for Directed Verdict are denied.

Further, be advised that beginning October 10th we will commence working at 9:00 A.M. and continue until 9:30 P.M., Monday through Thursday.

Lunch hour will be from 12:00 Noon to 1:15 P.M.

Dinner hour will be from 5:00 P.M. to 6:15 P.M.

I have canceled my attendance at the judges' conference and will be in attendance here during the week of October 16th. The above schedule will be continued during that week and every day thereafter until the trial is finished.

Please be governed accordingly.

Sincerely,

Fred L. Bryson

FLB:mb

APPENDIX Q

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

PINELLAS COUNTY, FLORIDA

Plaintiff,

vs. CASE NO.: 83-133313-8

INTERPACE CORPORATION;
CLEVEPAK CORPORATION;
AND MADISON MANAGEMENT
GROUP, INC., AS SUCCESSORS
OF INTERPACE CORPORATION;
AND CH2M HILL SOUTHEAST,
INC.,

Defendants.
_____/

ORDER DENYING MOTION TO DISQUALIFY

This case came on to be heard on the motions of Defendant, Madison Management Group, Inc. and the Defendant, CH2M Hill Southeast, Inc. for disqualification of the undersigned judge. Both of said Defendants, as a part of their motions, included a summary of what they conceived to be the relevant facts and law involved. The Plaintiff, Pinellas County, filed its Memorandum of Law in opposition to the Motions for Disqualifications. The Court has carefully considered both of said motions as well as the Plaintiff's Memorandum.

The nonjury trial of this case began on January 17, 1989 and has continued until the present time. Thousands of pages of testimony have been taken from numerous witnesses. The Parties, both Plaintiff and Defendant, have spent hundreds of thousands of dollars in expert and nonexpert witness fees, attorneys fees, and other costs, and the trial of this case has consumed substantially all of the time of the judge and other court officials since the beginning. The

disqualification of this judge will necessitate a new trial of this case from its very inception, and all of the moneys expended by the parties and all of the public monies expended will go for naught.

The Court must assume that the motions and the memoranda filed by the movants were filed in good faith and that the moving Defendants believe that the trial judge is prejudiced against them, as alleged in the motions. All of this creates an unfortunate situation from the standpoint of the parties, their attorneys, and the Court. The trial of this case is drawing to a conclusion. Because of all of the foregoing facts, the Court has given great consideration to the motions of the moving Defendants and to the memorandum of the Plaintiff, Pinellas County.

The Court finds that the motions and the supporting affidavits filed by the moving Defendants are legally insufficient. The motions are largely based on the conduct of the trial judge during the course of the trial during the questioning of many of the witnesses. It may be that some of such conduct constituted judicial error prejudicial to the moving Defendants. If so, this will undoubtedly be pointed out to the appropriate Appellate Court by those Defendants, if any, who do not prevail in this case. Although the Court believes that some of the quoted portions of the Court's comments are taken out of context and that a reading of the entire testimony of the witness will reflect that the Court's conduct in this regard was not erroneous, the Court must take said quoted portions of said testimony as true and the Court does so. It is the view of the Court, however, that said conduct, as so reflected, does not exhibit any prejudice or bias either for or against any of the parties to this cause and, therefore, is legally insufficient to warrant disqualification.

The Court further finds that if some of the conduct of the Court alleged in the motions warranted a belief that the judge was prejudiced or biased for or against any of the parties, the moving Defendants, by failing to object thereto promptly in some instances, and in other instances by failing to timely file their motions to disqualify the judge, waived their rights to do so.

On October 10, 1989, the trial of this case was set to continue with the taking of evidence. A conference was held in the chambers of the judge. At said conference, counsel for CH2M Hill Southeast, Inc. announced that he desired to file a motion, without designating the nature of the motion. The Court requested a copy

of the motion which request was not complied with and counsel for said Defendant requested that the conference in chambers adjourn and that the case go forward in the courtroom, to which request the trial judge acceded. When the trial was convened in the courtroom, which had an unusually large number of people present, counsel for CH2M Hill Southeast, Inc., for the first time, handed the judge the Motion to Disqualify and immediately launched into his argument on the motion, which argument was extensive and contained substantially all the matter alleged in the Motion to Disqualify.

At the conclusion of said argument, the judge asked counsel for the Defendant, Madison Management Corporation, Inc. if his client desired to join in the motion of the Defendant, CH2M Hill Southeast, Inc., and was advised that counsel would have to discuss the matter with his client. The matter was then set for hearing on the Defendant CH2M Hill's motion for the following morning, and the court was recessed.

Prior to the Court reconvening the following morning, the trial judge carefully read and considered the pending Motion for Disqualification, and the manner in which it was presented, and the Court concluded that counsel for CH2M Hill deliberately contrived a means to attack the Court's integrity openly and before a large segment of the public without affording Plaintiff's counsel an opportunity to question the validity of said counsel's attack and, of course, with the trial judge having no opportunity to defend himself. The trial judge further concluded that said conduct on the part of defense counsel was an attempt to goad the trial judge into making intemperate remarks which might afford defense counsel an opportunity to have the judge recused because of prejudice on the part of the trial judge against said counsel.

The Court convened the following morning, October 11, 1989 in the open courtroom for the purpose of hearing arguments on the then pending Motion to Disqualify. The trial judge suggested to counsel for CH2M Hill that he did not believe the Motion to Disqualify was filed in good faith and afforded counsel an opportunity to withdraw said motion. Upon the declination of CH2M Hill to withdraw the motion, the Court made some intemperate remarks relative to the good faith and ethics of Mr. Schooley, counsel for the corporation. Thereafter, Madison Management Group, Inc. filed its Motion to Disqualify the judge and proceeded briefly

to argue the same in the courtroom. At the conclusion of the brief argument, the Court recessed until the following Monday morning at which time the Court would hear argument by the moving Defendants and the Plaintiff relative to said Motions to Disqualify.

The statute for disqualification of judges for prejudice or bias pertains to prejudice or bias for or against the parties in the litigation and not their lawyers. There are numerous Florida cases holding that the prejudice of the trial judge against the lawyer of a party might be of such degree or character as to rob the judge of that degree of impartiality required by law. The Court is of the view that in the middle of an extremely length trial a lawyer cannot deliberately provoke an incident calculated to anger the judge against the lawyer, and then based thereon seek to disqualify the judge from proceeding further.

The Court has seriously considered his attitude toward the parties themselves in this case and does not believe that he has been, is, or will be, prejudiced for or against any of them. He regrets that he made intemperate remarks to Mr. Schooley, counsel for CH2M Hill, and through this Order assures all of the parties that they will receive a fair and impartial trial despite any feelings which he might have had toward Mr. Schooley, personally.

IT IS THEREUPON ORDERED AND ADJUDGED that:

The motions of the Defendants, Madison Management Group, Inc., and CH2M Hill Southeast, Inc. for disqualification of the undersigned judge be and the same are hereby denied.

DONE AND ORDERED at St. Petersburg, Florida, this 17 day of October, 1989.

_____

Circuit Judge

Copies furnished to:

Jeffrey S. O'Brien, Esq.
Stephen M. Bull, Esq.
G. Lee Garrett, Jr., Esq.
Michael J. Keane, Esq.
John T. Allen, Jr., Esq.
Lynn Hamilton Cole, Esq.

APPENDIX R

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

OCTOBER 27, 1989

CH2M HILL SOUTHEAST, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 89-02918
	)	CIR. CASE NO. 83-13313-08
HONORABLE FRED L. BRYSON,	)	
Circuit Judge of the Sixth	)	
Judicial Circuit,	)	
	)	
Respondent.	)	

Counsel for petitioner having filed a petition for writ of prohibition, upon consideration, it is

ORDERED that the petition is hereby denied.

DANAHY, A.C.J., and HALL and THREADGILL, JJ., Concur.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Ralph C. Dell, Esquire
Lynn Hamilton Cole, Esquire
Stephen M. Bull, Esquire
Steven R. Schooley, Esquire
State Attorney
Attorney General
John T. Allen, Jr., Esquire
Michael J. Keane, Esquire
G. Lee Garrett, Jr., Esquire
Jeffrey S. O'Brien, Esquire
Honorable Fred L. Bryson

/DM

APPENDIX S

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

OCTOBER 27, 1989

MADISON MANAGEMENT GROUP, INC.,	)	
Petitioner,	)	
v.	)	CASE NO. 89-02916
	)	CIR. CASE NO. 83-13313-08
HONORABLE FRED L. BRYSON, Circuit Judge of the Sixth Judicial Circuit,	)	
Respondent.	)	

Counsel for petitioner having filed a petition for writ of prohibition, upon consideration, it is

ORDERED that the petition is hereby denied.

DANAHY, A.C.J., and HALL and THREADGILL, JJ., Concur.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Ralph C. Dell, Esquire
Lynn Hamilton Cole, Esquire
Stephen M. Bull, Esquire
Steven R. Schooley, Esquire
State Attorney
Attorney General
John T. Allen, Jr., Esquire
Michael J. Keane, Esquire
G. Lee Garrett, Jr., Esquire
Jeffrey S. O'Brien, Esquire
Honorable Fred L. Bryson

/DM

APPENDIX T

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

MARCH 8, 1990

CH2M HILL SOUTHEAST, INC.,

Petitioner,

v.

Case No. 89-03171
Cir. Civ. 83-13313-8

HONORABLE FRED L. BRYSON,
Circuit Judge, Sixth Judicial Circuit,

Respondent.
_____/

Counsel for petitioner having filed a Petition for Writ of Prohibition, upon consideration, it is ordered that the petition is hereby denied.

Pinellas County's motion to strike is denied.

HALL, A.C.J., THREADGILL, and PATTERSON, JJ., Concur.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Ralph C. Dell, Esq.
and Lynn Hamilton Cole, Esq.
Stephen M. Bull, Esquire
Attorney General
Richard T. Earle, Jr., Esq.
G. Lee Garret, Jr., Esq.
State Attorney
Hon. Fred L. Bryson

Jeffrey S. O'Brien, Esq.
Michael J. Keane, Esquire
Richard L. Ake, Clerk
John T. Allen, Jr., Esq.
Raymond T. Elligett, Esq.

/BB

APPENDIX U

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

MARCH 8, 1990

CH2M HILL SOUTHEAST, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 89-02918
	)	
HONORABLE FRED L. BRYSON, Circuit Judge of the Sixth Judicial Circuit,	)	
	)	
Respondent.	)	

Petitioner having filed a motion for rehearing and rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that said motion is hereby denied.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

c: Ralph C. Dell, Esquire
Lynn Hamilton Cole, Esquire
Stephen M. Bull, Esquire
State Attorney
Attorney General
Michael J. Keane, Esquire

John T. Allen, Jr., Esquire
G. Lee Garrett, Jr., Esquire
Jeffrey S. O'Brien, Esquire
Honorable Fred L. Bryson

APPENDIX V

Excerpts from Findings of Fact, Conclusions of Law, and Final Judgment for Plaintiff, Pinellas County

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

Circuit Civil No. 83-13313-08

PINELLAS COUNTY,

Plaintiff,

vs.

INTERPACE CORPORATION,
CLEVEPAK CORPORATION,
AND MADISON MANAGEMENT
GROUP, INC., AS SUCCESSORS
OF INTERPACE CORPORATION;
AND CH2M HILL SOUTHEAST,
INC.,

Defendants.
_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT FOR PLAINTIFF, PINELLAS COUNTY

THIS CAUSE is before the Court for determination upon Plaintiff, PINELLAS COUNTY's, First Amended Complaint claiming that a thirteen and one-half mile segment of its major water transmission main made of 54-inch and 60-inch diameter prestressed concrete pipe is defective and should be replaced. The prestressed concrete pipe was manufactured during 1977 and 1978 by a nationally known pipe manufacturer known as Interpace Corporation. On May 3, 1985 Interpace Corporation changed its name to Madison Management Group, Inc. In July of 1987, Clevepak Corporation merged with Madison Management Group, Inc. Therefore, the Defendant, MADISON MANAGEMENT GROUP, INC., is properly before the Court as a successor to INTERPACE CORPORATION and throughout the remainder of these Findings will be referred to as "INTERPACE".

In March of 1975 Pinellas County executed an agreement with a consulting engineering firm known as Black, Crow and

Eidsness, Inc. to design the pipeline, select the pipeline's route, draw all contracts necessary to the letting of bids including contracts with the pipe manufacturer, test the materials which were to be used in the manufacturing of the prestressed pipe, and to sufficiently inspect the pipe as it was being manufactured and after installation. The engineer's main charge was to protect Pinellas County against improper manufacturing and installation of the pipeline. (Footnote omitted) After the pipeline's construction, Black, Crow & Eidsness, Inc. (BC&E) changed its name to CH2M Hill Southeast, Inc. Throughout the remainder of these Findings the Defendant engineer will be referred to as "CH2M HILL".

In sum, the individual pieces of prestressed concrete pipe, both 54-inch and 60-inch in diameter, were to be manufactured by Interpace at its Lacoochee plant (footnote omitted) located in Lacoochee, Pasco County, Florida, who would in turn deliver the pipe to Suwanee Transfer and Storage, Inc. for hauling to the laying site (footnote omitted) to be installed by another contractor known as Bumby & Stimpson, Inc. (Footnote omitted) CH2M Hill's contractual obligation was to design the pipeline, review and approve the plans and specifications submitted by Interpace for the construction of the pipe, review certain component part tests which were to be submitted by the manufacturer, Interpace, draw the contract between Pinellas County and Interpace, and to certify to Pinellas County that the pipeline had been constructed according to the plans and specifications. There are other contractual duties assumed by CH2M Hill which will be referred to in these Findings which bear upon the questions of breach of contract and negligence CH2M Hill.

The Court started hearing testimony in the case on January 17, 1989, with testimony having been concluded on January 24, 1990. There have been 131 days of trial during this time. This case is purported to be one of the longest if not *the* longest case ever heard in Florida. There have been 1,567 exhibits admitted into evidence.

As trier of the facts, the Court has been required to learn and apply a substantial number of engineering and water production disciplines including metallurgy, wire making and drawing, the manufacture of large diameter prestress pipe, pipeline design, pipeline testing, the mathematical formulas associated with the pipeline manufacture and design, hydraulics, structures, petro-

graphics (the study of concrete and mortar), chemistry (as applied to groundwater, metallurgy and petrographics), corrosion, principles of water supply to a large populated county, statistics and population forecasting, computer programs depicting a water supply system, and interpretation and application of the national standard for manufacturing prestressed pipe known as AWWA C301-72 and various American standards testing metallurgical standards applicable in the case such as ASTM A227-71 and ASTM A648-73.

The County has sued the manufacturer Interpace upon several legal theories for providing to Pinellas County a prestressed concrete pipeline which does not have the specified operating pressure of 150 psi and surge pressure of 210 psi, and which is otherwise claimed defective in not complying with the specifications for manufacture of the pipe. Punitive damages are also sought from Interpace based upon the theories of fraud, strict liability in tort, and willful and wanton misconduct. Pinellas County has also sued its engineer whose duty was to protect the County from the manufacturer providing pipe which failed to meet the specified and the required pressure rating and defective pipe. Damages for the cost of the replacement of the pipeline are sought from both Defendants. Pinellas County also sues CH2M Hill for the cost of coal tar epoxy coating the pipeline which the County asserts should have been included by the engineers in the specifications because of aggressive soil and groundwater attack to which the present pipeline is being subjected. In addition, Pinellas County has sued CH2M Hill for improperly designing certain vacuum relief valves at below ground level in vaults along the pipeline, claiming it was necessary to raise the valves above ground level to prevent the contamination of the pipeline with groundwater which had accumulated in the vaults. The County claims that the valves would not operate properly to prevent surges in the line when filled with water. Pinellas County claims further damages for replacement of burst pipe, failed tapped pipe and leaking pipe. After serious consideration and deliberation, the Court finds for the Plaintiff, Pinellas County, and against the Defendants on all counts.

...

I. FINDINGS OF FACTS

A. THE IMPORTANCE AND LOCATION OF THE PIPELINE

Pinellas County imports a substantial portion of its water supply from neighboring counties. The County is a member of the West Coast Regional Water Supply Authority whose task is to implement a regional water supply concept whereby the Authority would supply water to its municipal and county members in Hillsborough County, Tampa, Pasco County, City of St. Petersburg, and Pinellas County. The Water Authority operates a wellfield known as the Cross Bar Ranch Wellfield located in Pasco County. Water from this wellfield is transmitted through a 60-inch diameter transmission line south to the Cypress Creek Pump Station. The Cypress Creek Pump Station and wells are also owned by the Water Authority. Water from both the Cross Bar Ranch and Cypress Creek Wellfields are transmitted from the Cypress Creek Pump Station south through an 84-inch diameter prestressed concrete pipeline, which in turn reduces to a 66-inch diameter line. In turn a 42 and 54-inch diameter transmission line are connected to the main 66-inch line at the Pasco-Pinellas County line. The 42-inch transmission main is intertied to the main 54-inch line by a 24-inch in diameter main, and also to a main at the Keller Pump Station. The 54-inch transmission main discharges into a 60-inch transmission line that runs further south. This interconnection was constructed to give flexibility in operating the water system to the Pinellas County water director and can be closed sending all water coming down the 84-inch and 66-inch diameter transmission lines south through the 54 and 60-inch transmission lines to the 580 North Booster Station. (Footnote omitted) Water is supplied to Pasco County through a main 30-inch's in diameter at U.S. 19 at the Pasco/Pinellas county line. Thus, the 60-inch diameter transmission line begins at the "interconnection" from the 42-inch and 54-inch main and runs south to the North (State Road 580) Booster Station located just north of the juncture of State Road 580 and U.S. Highway 19. There are bypass facilities at the North Booster Station which would permit all water flowing from the 60-inch transmission line, to bypass completely the 580 booster pumping facilities. (Footnote omitted) There are other transmission lines which run from the Eldridge-Wilde Wellfield and into the North

Booster Station which are minimally related to these proceedings. For a complete pictorial understanding of the transmission system, see Exhibit "A" to this judgment which is consistent with Exhibit 12 in evidence. (Footnote omitted)

When the Pinellas County Water System is viewed as a whole, the transmission line which is the subject of this litigation is the most critical section of the Pinellas County Water System. (Footnote omitted) It transmits water from all three major wellfields. The line is so critical to the adequate supply of water to the Pinellas County population that the line cannot be taken out of service except under extreme emergencies and then for only a very short period of time. (Footnote omitted) The volume of water needed on a daily basis by Pinellas County cannot be met without the line being in service, especially during peak demand days and dry seasons. (Footnote omitted) Elimination of the use of the line for any unreasonable or substantial period of time would cause a water emergency, water crisis and at least water rationing. (Footnote omitted) These facts were well known to both CH2M Hill and Interpace at the time the lines were designed and manufactured. (Footnote omitted) Therefore, both Interpace and CH2M Hill knew the critical nature of the line and that the pipeline had to be constructed without material defects in the pipe. Both Defendants knew or should have known by the nature and location of the pipeline that each pipe had to be dependable and reliable (footnote omitted) much like the wing of an airplane.

Even worse is the potential of "backflow". (Footnote omitted) "Backflow" occurs when the water system is not able to supply the required water to a given area thereby causing a negative pressure to occur in the water distribution lines. (Footnote omitted) This negative pressure draws water into the water distribution lines and ultimately into the water transmission lines and contamination from septic tanks, toilets, and other pollution, etc. occurs. (Footnote omitted) "Backflow" creates a substantial health hazard. (Footnote omitted) When "backflow" occurs the lines must be flushed, disinfected and sampled before potable water can again be supplied to the public. (Footnote omitted) In view of the substantial increase in water maximum day demands in Pinellas County from 100,000,000 MGD in 1987 to a projected 200,000,000 MGD by the year 2020, any failure on blowout of the pipeline in question could and probably would cause a catastrophe. (Footnote omitted)

Under such a threat it is clear that the public interest requires that the line in question be dependable and reliable. (Footnote omitted) Replacement of such a critical pipeline is in the mind of the trier of fact the only plausible solution. (Footnote omitted)

B. THE LONGEVITY OF A PROPERLY MANUFACTURED PRESTRESSED CONCRETE PIPELINE

The longevity of a properly manufactured pipe is applicable only in the context of the state of decay which the pipe is experiencing because of progressive corrosion mechanisms on the prestress wire. These corrosive mechanisms are ongoing and continuing in the pipeline. (Footnote omitted) The issue is not material on the question of whether the pipe was properly manufactured so that it can be used at the specified pressure of 150 psi working pressure and 210 psi surge pressure. In this context, the pipeline must be replaced because the pipe was not made to the specifications of 150 psi working pressure and 210 psi surge. (Footnote omitted) For this reason alone the County did not get what it bargained for even if there was no ongoing corrosion in the pipeline. (Footnote omitted)

The Court must make a factual determination of how long Pinellas County could reasonably expect the pipeline in question to last if properly manufactured and used without surging the line beyond its design limits. The best reasonable engineering evidence shows that a prestressed pipe should last more than 100 years or indefinitely. Interpace itself in a technical article written by Shaw who was the General Manager of Research and Development in 1965 published in *Civil Engineering*, this statement:

> The high capital investment involved in major pipeline systems demands that they be constructed of materials with maximum economic life. Reinforced and prestressed concrete have achieved increasing popularity as pipeline materials because of their demonstrated consistent longevity; steel encased in concrete will be protected and will preserve its structural integrity for centuries. **

(Plaintiff's Exhibit 17A in evidence)

The article concludes that prestressed pipe will have a very long life generally in excess of 100 years when buried in a natural occurring soil environment. Interpace's Vice President of Technology and former Chief Engineer, Bob Bald, testified properly manufactured prestressed pipe should last "*indefinitely*". (Footnote omitted) Expert engineers agree. (Footnote omitted) The salesman for Interpace prior to the letting of bids for the 60 and 54-inch project represented to Pinellas County and to CH2M Hill in brochures that Interpace pipe should last 100 years. (Footnote omitted) Advertisements of Interpace placed in *Civil Engineering - ASCE* and *Journal American Water Works Association* solicited engineers to specify Interpace prestressed concrete pipe because it would last as long as the Roman aqueducts. (Footnote omitted)

Cores from other prestressed pipe in the ground for many years which are not manufactured with Interpace Class IV wire have been examined and have been clean and totally free of rust. (Footnote omitted) Yet Pinellas County pipe has substantial major rust on prestressed wire on every pipe examined. (Footnote omitted) The Court believes the engineering experts who are of the opinion that the life span of prestressed concrete pipe is conservatively well over 100 years. (Footnote omitted) After considering all opinions and qualifications of the engineers and especially the materials which are required to be used in making the component parts of the pipe, Pinellas County should well have assumed it was purchasing pipe which would last more than a century and probably indefinitely barring any unusual circumstances. The greater weight of the evidence shows that from a serviceability and reliability standpoint the line has already failed. (Foonote omitted) All or a substantial number of pipe will prematurely burst if the line was continued to be used without replacement. (Footnote omitted) Each pipe excavated is in a far greater state of decay than would be the case if the pipe were properly manufactured. (Footnote omitted)

The position taken by CH2M Hill engineers that the pipeline should only last from 20 to 50 years (footnote omitted) is without engineering credibility. The engineer, CH2M Hill, never advised Pinellas County of the estimated 50 year life. (Footnote omitted) The Court believes the testimony of the former Water Director for Pinellas County who was in charge at the time the line was designed to the effect that he understood there was no limit as

to how long the pipe would last and had he been told that the pipe would only last for 50 years he would not have agreed to constructing the line with prestressed concrete pipe because of the lines' importance and because of its strategic location. (Footnote omitted)

Just after the Pinellas County pipeline had been constructed, the president of Interpace made a startling admission against interest by directing his second in command to "destroy all documents stating that Interpace pipe would last 100 years or more". (See Exhibit 24) The Court views this exhibit like any other normal trier of fact and completely construes this admission against Interpace. Through this document, Interpace has admitted that it found out that it was not properly manufacturing its pipe and had not constructed the Pinellas County pipe properly and for that matter all of its other pipe and that these pipes and the pipelines would *not* last 100 years or more as claimed by Interpace to Pinellas County officials and the engineering public long prior to the construction of the Pinellas County pipeline.

...

XIII. FINAL JUDGMENT

Based on the foregoing, it is HEREBY ORDERED AND ADJUDGED:

1. Judgment is hereby rendered in favor of Pinellas County and against Madison Management Group, Inc. for the total sum of $24,014,630.62 together with interest at the rate of twelve (12%) percent per annum for which sum let execution issue;

2. Judgment is hereby entered in favor of Pinellas County and against CH2M Hill Southeast, Inc. in the amount of $19,798,018.82 together with interest at the rate of twelve (12%) percent per annum for which sum let execution issue;

3. Judgment is reserved to tax costs against the defendants;

4. In addition, Pinellas County is hereby awarded its taxable costs against both defendants, Madison Management Group, Inc. and CH2M Hill Southeast, Inc. The Plaintiff is instructed to file within 30 days of the entry of this judgment, a Motion to Tax Costs. The Defendants are instructed to filed with the Court, within 30 days of service of Plaintiff's Motion to Tax Costs, its specified detailed objections to the claimed taxable costs of the Plaintiff, Pinellas County. The Court will then set an evidentiary hearing on the Motion to Tax Costs.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida this 6th day of June, 1990.

/s/ Fred L. Bryson
CIRCUIT JUDGE

Copies furnished to:

John T. Allen, Jr., Esquire
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
St. Petersburg, Florida 33711

Attorney for Plaintiff

Michael J. Keane, Esquire
Baynard, Harrell, Mascara & Ostow, P.A.
P.O. Box 31687
St. Petersburg, FL 33732-1687
Attorney for Plaintiff

G. Lee Garrett, Jr., Esquire
Jones, Day, Reavis, & Pogue
Thirty-Third Floor
First Atlanta Tower
Atlanta, GA 30383-3101
Attorney for Interpace

APPENDIX W

Excerpts of the Initial Brief of Appellant CH2M HILL SOUTH-EAST, INC.

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

CASE NOS. 90-2027 and 90-2028

MADISON MANAGEMENT GROUP, INC.,
and CH2M HILL SOUTHEAST, INC.,

Appellants,

v.

PINELLAS COUNTY, FLORIDA,

Appellee.
_____/

INITIAL BRIEF OF APPELLANT CH2M HILL SOUTHEAST, INC.

On Appeal from a Final Judgment Entered in the Sixth Judicial Circuit, in and for Pinellas County, Florida

---

Stephen M. Bull, Esq.
Fla. Bar No. 172347

Arthur J. England, Jr., Esq.
Fla. Bar No. 022730

Guy S. Haggard, Esq.
Fla. Bar No. 372005

Linda Ann Wells, Esq.
Fla. Bar No. 231861

Bull and Haggard
Suite 1200
111 North Orange Avenue
Orlando, Florida 32801

Co-Counsel for CH2M Hill

Charles M. Auslander, Esq.
Fla. Bar No. 349747
Fine Jacobson Schwartz Nash
Block & England
One CenTrust Financial Center
100 S.E. Second Street
Miami, Florida 33131
(305) 577-4000

Counsel for CH2M Hill

Summary of Argument

The trial judge was required to disqualify himself following the presentation of timely motions to disqualify made during the course of trial. The judge had engaged in actions during the trial, and made comments throughout the trial, which prejudiced Hill in the presentation of its case and created a reasonable fear in Hill's principals that the judge was biased in favor of the County. The motions for disqualification which were presented by hill were legally sufficient on their face. More-over, the trial judge made comments and took actions following presentation of the motions which mandated his disqualification. *E.g., MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332 (Fla. 1990).

The trial judge erred as a matter of law imposing tort liability on Hill. The County neither alleged nor proved any tort independent of Hill's contractual duties; indeed, the County affirmatively identified Hill's alleged negligence by reference to its contractual obligations. In the absence of a tort independent of contractual duties, no tort recovery is permitted. *Lewis v. Guthartz*, 428 So.2d 222 (Fla. 1982). Nor is tort liability possible for a breach of statutes creating no private right of action and imposing obligations only on governmental agencies. In any event, tort liability against Hill cannot be sustained where, as here, there is only economic loss to the pipeline itself, with nominal (if any) damage to other property. Florida Power & Light Co. v. Westinghouse Electric Corp., 510 So.2d 899 (Fla. 1987); AFM Corp. v. Southern Bell Telephone and Telegraph Co., 515 So.2d 180 (Fla. 1987).

The trial court erred as a matter of law in finding Hill liable for breach of its engineering contract based on defects in the pipe segments manufactured by Interpace and as a result of Interpace's use of class IV wire in pipe segments. Hill segments being made by Interpace. Nor was the use of class IV wire by Interpace a breach of Hill's contract, since that type of wire was in conformity with AWWA C-301-72 standards that Hill had specified. The trial court's determination that the County's contract with Interpace "merged" with the Hill Contract so as to impose additional contractual duties on Hill is legally unsustainable.

The trial court's award of damages equivalent to the cost of replacing the entire 13.5 mile pipeline with improved components is not sustainable by law or by the evidence. Hill has no tort liabil-

ity whatsoever, and its obligation for breach of contract, if any indeed occurred, at most would warrant liability for the costs of repair. The entire pipeline had been operating as intended for twelve years at the time of trial, with only one in-service break. No competent substantial evidence was presented to sustain the trial court's conclusion that the entire pipeline must be dug up and replaced. Moreover, no theory of law authorized the trial judge to award damages for a new pipeline with improvements and betterments that had not been contracted for originally.

...

B. *Hill is not liable for breach of contract.*

The County's final judgment against Hill hinges on three alleged breaches of contract. For one thing, the court held that Hill had contracted to inspect the manufacture of pipe segments based on the County's contention that references to "contractor" and the "construction site" in the Hill Contract are not references to the pipeline installation process, but rather are references to the pipe segment manufacturing process. For another, the court held that Hill had contractual duties under the Interpace Contract — a document entered into between the County and Interpace nearly two years following execution of the Hill Contract — based on a theory of document "merger." The court additionally ruled that Hill had breached its contractual design responsibilities by allowing Interpace's use of class IV wire for the pipeline, and by underdesigning the operating pressure for pipe segments. None of these bases for finding a contract breach is supportable in the record of law.

1. *Hill had no contractual duty to inspect the manufacture of pipe segments.*

The trial court's final judgment concludes that Hill was required as part of its Item A design duties to perform engineering services in connection with the process of manufacturing pipe segments. There is no such directive in Item A of the Hill Contract. The trial judge was persuaded that the terms "contractor" and "construction site" in the Hill Contract were references to the pipe segment manufacturing process, rather than to the pipeline installation process. A plain reading of that document belies that interpretation, however, and the context of its drafting and execution confirms that the language used could only mean the contrary.

The language in Item A of the Hill Contract makes clear that Hill's design functions encompass duties relevant to the design of the pipeline system, not the manufacture of the pipe segments. For example, Item A-1 anticipated that Hill would consult regarding "property, boundary, right of way, topographic and utility surveys," each patently relating to the location of the pipeline. Consistently, Item A-3 called for Hill to draft specifications and schedules for the proposed improvements, meaning, of course, the pipeline system. (V. 128 at 19042).

References to "construction site" and "contractor" in Items A and B can only relate to installation of the pipeline. Item A-5 directs Hill to "advise prospective bidders, suppliers of construction materials, and equipment manufacturers." *Id.* at 19042. To "advise" *prospective* bidders, suppliers and equipment manufacturers could not have meant to inspect and oversee pipe segment manufacturing, for in 1975 when the Hill Contract was signed, there was no pipe segment manufacturer. None had even bid the job, let alone been selected to manufacture pipe segments.

In Item A-6, Hill was made responsible for "canvassing construction proposals, and [making] engineering recommendations in awarding of construction contract or contracts." *Id.* Use of the word "construction" in Item A-6 correlates with the identification of bidders, suppliers and manufacturers in Item A-5, relating to advisory services for *prospective* parties.

Just as plainly, Item B also identified services to be performed by Hill which related only to installation of the pipeline. All paragraphs in Item B discuss phases and features of procedures common to a contract between a consulting engineer on the one side, and an owner-general contractor on the other, such as visits to the construction site (Item B-1), preparation of routine change orders and stop work orders (Item B-4), recommendations regarding final acceptance of construction work (Item B-6), and completion of a set of prints for each construction contract changed during the construction process (Item B-7). Significantly, the concluding, unnumbered paragraph of Item B provided that Hill's professional services during construction were *not* to include "the testing of materials or the furnishing of resident project representatives, field engineers, and inspection personnel." It is impossible to reconcile the installation-oversight duties of Hill with an obligation to control the manufacturing process when the contract expressly exclud-

ed materials testing and furnishing inspection personnel.[22]

Item C of the Hill Contract proves the point further. The first paragraph of Item C proposes that Hill would furnish "resident engineer" services "to observe the *construction* work of the *contractor* on a daily basis." (Emphasis added). These services were to have included:

> field observation, inspection of materials and work, ... preparation of daily progress reports, monthly summaries...reviews, verifications and estimates for payments to contractors.

The County never authorized Hill to perform Item C services; instead, the County itself took direct responsibility for all "resident engineer" tasks. (V. 76 at 11484; V. 77 at 11279-280, 11308-309; V. 96 at 14249, 14256). The second paragraph of Item C calls for "on-site observations of the work and progress, and field checks of materials
and equipment." The "field checks" provision with regard to materials and equipment again confirm that Item C's discussion of "construction" related services is a discussion of matters to occur at the pipeline installation site, not a pipe manufacturing factory.

These plain readings of the language of the Hill Contract are bolstered by the context of its drafting. No one knew when the Hill Contract was signed in 1975 that the County would elect to save sales tax some two years later by contracting directly with a pipe supplier, rather than going through a general contractor. Indeed, the County's primary contract negotiator acknowledged that the Hill Contract was signed at a time when the County intended to use a single contractor both to purchase the pipe and to install the line. (V. 76 at 11177). Design phase supervisory services by Hill, which were completed before a pipe supplier was even selected, could not have plausibly been intended to include pipe manufacturing supervisory services.

---

22 The very location of the Item B exclusion is in the midst of a discussion of "construction" duties and construction "contractor" related to the installation of pipeline, not the pipe segment manufacturer

The plain language of the Hill Contract is at odds with the County's contention, as adopted in the final judgment, that Hill's engineering services required supervision over pipe segment manufacture. It was error for the judge to conclude that Hill breached a contractual duty to perform pipe segment manufacture-related duties.

2. *Hill could not be held to a contractual duty under the County's contract with Interpace through the legal fiction of a "merger" of two separate documents.*

A second basis for finding Hill in breach is the final judgment's legal fiction of "merger" of the Hill Contract with the Interpace Contract.[23] Hill was not a signatory to the Interpace agreement. The latter was signed almost two years after Hill's contract. Not one case is identified in the final judgment for the proposition that a non-signatory to a contract is obligated to perform duties identified within that contract, let alone when the two documents are not contemporaneous. The County argued its theory of contract merger — in order to bind Hill to the terms in the Interpace Contract by invoking two doctrines of judicial construction: *"in pari materia"* and "construction against the drafter." Neither legal theory has any sound or legitimate application to this circumstance.

Not surprisingly, the final judgment does not rely on any case in which the *in pari materia* doctrine was utilized in a like circumstance. It sole reliance is on *Standard Newspapers, Inc. v. Woods*, 110 So.2d 397 (Fla. 1959), where a second, contemporaneous and interdependent contract was signed because the first would not have been entered without the other. Under these circumstances, the court construed the second contract as being *in pari materia* with the first. Quite clearly, there is no similarity between the *Woods* situation and this one. Unlike *Woods*, Hill did not benefit from the Interpace Contract. Unlike *Woods*, the Interpace Contract was not contemporaneous in time with the Hill Contract. Unlike *Woods*, the 1975 Hill Contract was not contingent on the 1977

---

23 This fall-back thesis inherently acknowledges that the Hill Contract, standing alone, could not support liability for manufacturing-related duties.

Interpace Contract.

The trial court's acceptance of the County's second doctrine of judicial construction — construing agreements against the drafter — is equally far afield. That doctrine applies only where a signatory to an agreement has drafted the document. The doctrine has never been applied in Florida to impose duties on a non-party. Again, the cases identified in the final judgment reflect a very different situation — the typical circumstance of construing a contract against the *signator*-drafter.[24]

The importation of a "merger' doctrine into this case is ludicrous. As stated in *In re: Estate of Samuel Donner*, 364 So.2d 742 (Fla. 3d DCA 1978):

> Ordinarily, a contract cannot bind one who is not a party thereto since to create a valid contract there must be reciprocal assent to a certain and definite proposition.

(Citations omitted); *see also Ogden v. Groves*, 241 So.2d 756 (Fla. 1st DCA 1970). Likewise, in *Jenkins v. City Ice & Fuel Co.*, 118 Fla. 795, 160 So. 215, 217 (Fla. 1935), the court recognized that

> A third party is not liable as a rule upon a contract, express or implied, unless he was one of the immediate parties to the agreement or has become a party to it by subsequent agreement with the original parties.

The trial court's conclusion — that the identification of engineering duties in the Interpace Contract bound Hill to perform those duties — should be compared with the reasoning in *Lawrence v. United States*, 378 F.2d 452, 461-62 (5th Cir. 1967):

> A person is not made a party to a contract merely by being named and described in it or merely by the

---

24 *Sol Walker & Co. v. Seaboard Coast Line R.R. Co.*, 362 So.2d 45 (Fla. 2d DCA 1978); *Bouden v. Walker*, 266 So.2d 353 (Fla. 2d DCA 1972); *Allegheny Mutual Casualty Co. v. State*, 176 So.2d 362 (Fla. 2d DCA 1965).

> fact that such a contract is referred to in a second instrument in a way to evidence that such a person is a party in another contract. This is especially true if the parties are different, are not identical, or if there is an absence of one or more significant elements of identity.

(Footnotes omitted).

The Florida Supreme Court recently demonstrated the narrow circumstances which must pertain to tie together and merge two distinct contracts. *OBS Company, Inc. v. Pace Construction Corp.*, 558 So.2d 404 (Fla. 1990), involved a lawsuit between subcontractor (OBS) and general contractor (Pace). Pace alone was in direct contractual relationship with the owner. OBS had only a direct contractual relationship with Pace. When OBS sued, Pace defended by asserting it had not been paid by the owner, and therefore it should not have to pay OBS.

Because OBS' agreement with Pace contained a provision which expressly incorporated the agreement between the owner and Pace as part of the Pace contract with OBS, the court was able to link the two agreements and require Pace (as signatory to both contracts) to pay OBS. There is a complete absence of any comparable incorporation by reference in this case. The only common signatory to the contracts here was the County, not Hill.

A case factually akin to this one is *Bernard Johnson, Inc., v. Continental Constructors, Inc.*, 630 S.W.2d 365 (Tx. 1982). In *Johnson*, a non-party architect/engineer was charged with a breach of a contract between the construction contractor and the owner, based on the allegation that the non-party engineer had assumed the obligations specifically assigned to it in that owner-contractor contract. The court rejected the attempted use of the contractor-owner's contract as a basis to impose liability on the architect/engineer, finding it to be unheard of and without legal support. The court lucidly explained that the substantive law on breach of contract exists because of the societal interest in having a person perform his promises, whether express or implied, so that actions for breach of contract "are inherently possible against promisors only." 630 S.W.2d at 369. While duties for the engineer may have been expressed in a contract to which it was not a party, due to the fact it

"was not in legal contemplation a party to the contract, it owed no contract-based duty to [the contractor]."[25] 630 S.W.2d at 370.

The artificiality of the court's "merger" theory is exposed more vividly by reviewing the language of the Interpace Contract, to which Hill was not a party. That 1977 contract defined Interpace as "supplier," not the unnamed "contractor" in the 1975 Hill Contract.[26] The terms of the Interpace Contract, moreover, were all keyed to engineering services relative to post-manufacture activities when pipe segments were delivered to the installation site. For example, section C-03(a) of the Interpace Contract provided that

> All materials furnished, when not in accordance with the intent of the Plans and Specifications, will be rejected *and shall be removed immediately* and replaced by suitable and satisfactory materials....

(V. 8 at 994 C-2) (emphasis added). This language deals with the *removal* of pipe segments brought to the installation site for failure to meet design drawings, plans and specifications.

Section C-03(a-1) authorizes the owner to stop supply of the pipe "[i]f the supplier fails to *remove* any defective materials ...." (emphasis added), plainly relating to delivered or installed pipes which proved to be defective and were to be removed from the system. Section C-03(b) places the burden on Interpace, as the

---

25 *Haddad v. Bagwell*, 317 S.W.2d 781 (Tx. 1958), is a similar case involving an owner's claim against an architect where the owner's contract was solely with a contractor. That case had the same outcome. The court held that the architect was entitled to summary judgment in the owner's suit since he was not an immediate party to the contract, not one for whose benefit it was made, and not in privity.

26 In fact, the term "construction" in the definition of "supplier" is expressly said to pertain "for purposes of *this* Contract" [meaning the Interpace Contract]. A logical correlation of the two contracts would identify Interpace as the "materials supplier" or the "equipment manufacturer" mentioned in the Hill Contract.

supplier, to confirm with the engineer through independent testing that the pipe segments have passed tests prior to delivery, and section G provides that Interpace, as supplier, has agreed "to permit a representative of the county, and/or its engineer ... to inspect the work progress ...." (V. 8 at 1020 G-3 ¶6). Interestingly, this latter section, which *does* specifically relate to the manufacturing site, provides only a right, not a duty of inspection at the manufacturing plant.[27]

Finally, if the terms of these respective contracts were doubtful as to the absence of any contractual duty on Hill, and if there were a doctrine of merger in a case such as this, the performance of the parties in relation to the provisions of the contracts removes any possible view of the contracts as requiring Hill to inspect the pipe manufacture plant.[28] The County was designated as the recipient of any testing data to be provided by the manufacturer. (V. 8 at 981; V. 128 at 19043 p. 1010-3, 15060-2 [REV]). If the County desired additional laboratory testing of the manufactured pipe segments and desired that testing be done by Hill, the County was required to request those services specifically under Item D of the Hill contract. The County never did this.[29]

---

27 The County in fact inspected the manufacturing plant repeatedly. (V. 96 at 14229-231, 14245-246, 14257-259, 14281). Section G-3 in the Interpace Contract also belies the interpretation given the provision of Hill's contract which called for four monthly visits to the "construction site". Were those four visits actually meant to be to the factory, then Hill's mere option to visit the factory, as contained within the Interpace Contract, would have been meaningless.

28 The final judgment wrongly concluded that if Hill was not performing duties related to resident engineering at the pipeline, the no one was performing those duties. The County had itself assumed these resident engineering and inspection services. (V. 8 at 995).

29 Neither the Hill Contract, nor the Interpace Contract, imposed a material testing obligation on Hill. This was Interpace's obligation primarily, with an adjunct responsibility of the County to obtain further materials testing if it deemed necessary. (V. 8 at 995)

In point of fact, the County had obtained tests of components of pipe samples from Interpace's Lacoochee pipe manufacturing plant, and County employees visited the Lacoochee pipe plant several times. (V. 96 at 14229-231, 14245-246, 14257-259, 14281). The County even suspected that the aggregate used to manufacture the concrete coating of the pipe was inadequate. (V. 84 at 12412-413).

The Hill Contract and the Interpace Contract are not legally or factually susceptible of merger, and the parties' course of performance directs a conclusion to the contrary because the County reserved to itself and in fact performed all "resident engineering" duties. The trial judge's conclusion (acting through the County's mind and pen) that only Hill was available to protect the County, is nowhere supported in the record or in law.

3. *Hill's pipeline design was free of defects.*

a. *Hill did not breach its contract in relation to Interpace's use of class IV wire in pipe segments.*

The trial court's final judgment found that Hill breached its contract by allowing Interpace to use class IV wire. Class IV wire was appropriate under the standards in existence at the time, however. The trial court has applied 1989 opinion testimony to interpret a 1977 contract, notwithstanding that Class IV wire conformed with AWWA C-301 standards when the Interpace Contract was made.

When Interpace contracted with the County to provide manufactured pipe segments, it agreed that segments would comply with AWWA C-301 standards, and Interpace in fact submitted shop drawings which specified that the pipe segments would be manufactured in accordance with AWWA specification C-301-72. (V. 128 at 19045). That standard specifies wire conforming to ASTM Designation A-227, but also provides that

> wire with specified minimum tensile strengths exceeding those in A-227, class II, may be used if the wire meets the other requirements for class II in that specification, and the pipe design may be based on these higher strengths.

(V. 128 at 19041).

By definition, class IV wire has a higher minimum tensile strength than class II wire, and it can be manufactured to meet all

other requirements for class II set forth in A-227. (V. 112 at 16858-859, 16863, 16868-869; V. 248 at 28040 pp. 156-69).

The chairman of the committee which authored AWWA C-301 in 1972 ("C-301-72"), Walter Neubauer, testified that class IV wire was plainly allowed and contemplated as a product meeting AWWA C-301-72. (V. 112 at 16835-920). Two other individuals who sat on the standards committee agreed that class IV wire could be used under that standard. (V. 93 at 13749, 13767, 13772, 13792-796). That fact was even acknowledged by the County's own expert, John Kiefer, and County experts who had tested the class IV wire used in pipe segments on this project found that it passed all specific A-227 test requirements. (V. 99 at 14738 pp. 156-59; and see this brief at p. 9, line 1-2).

Nonetheless, at trial the County arrayed a chorus of so-called expert voices consisting of engineers and metallurgists, none of whom ever sat on or participated in the work of the standards committee, who took a different view of AWWA C-301-72. This group contended from their 1989 vantage point that the standard should be read to permit tensile strengths exceeding the class II minimum, but only within the class II tensile range. (V. 39 at 5923-25; V. 46 at 6894, 6945-46; V. 50 at 7445-46; V. 60 at 8843; V. 168 at 21835 pp. 106-07, 116). This interpretation, of course, would make C-301-72 wholly redundant with A-227, which *already* allowed for use of wire with tensile strengths inclusive of the class II maximum.

There was no testimonial dispute at trial among the standards experts on the acceptability of class IV wire. The testimony of County witnesses who found a different meaning in the language some 17 years after it was written does not detract one whit from the fact that a reasonable design engineer in 1977 would readily have approved the use of class IV wire as being in compliance with C-301-72. Their disagreement as to what the standard would allow suggests, at best, an ambiguity in its wording. But any engineer in 1977 who believed there was ambiguity in C-301-72 and been concerned on receipt of Interpace's submittal sheet identifying its intention to use class IV wire, logically would first have contacted the drafting committee of the standard to inquire regarding the committee's intent. The uniform testimony at trial shows the answer they would have received: class IV was perfectly proper under AWWA C-301-72. Hence, it was clearly reasonable for Hill

to have accepted Interpace's selection of class IV wire in 1977.[30] (V. 112 at 16858-861).

The trial court's conclusion that class IV wire was not authorized for this pipeline is also legally defective. It contradicts the prohibition in Florida law against a court's reinterpretation of contract language which is otherwise clear and unambiguous. *See Hamilton Construction Co. v. Board of Public Construction*, 65 So.2d 729 (Fla. 1953); *Paddock v. Bay Concrete Industries, Inc.*, 154 So.2d 313 (Fla. 2d DCA 1963). It makes Hill, in its role as design engineer, a guarantor of the proper manufacture of pipe by Interpace, contrary to Florida law that a design professional's obligations do not include the guarantee of a perfect plan or a satisfactory result. *Bayshore Development Co. v. Bonfoey*, 75 Fla. 455, 78 So. 507 (Fla. 1918). A design professional is obliged only to perform contractual duties in accordance with the professional "standard of care used by similar professionals in the community under similar circumstances." *Lochrane Engineering, Inc. v. Willingham Realgrowth Investment Fund, Ltd.*, 552 So.2d 228, 232 (Fla. 5th DCA 1989), *rev. denied., sub nom., Anderson v. Willingham Realgrowth Investment Fund, Ltd.*, 563 So.2d 631 (Fla. 1990); *see also Ahimsa Technic, Inc. v. Lighthouse Shores Town homes Development Co., Inc.*, 543 So.2d 422 (Fla. 5th DCA 1989). The evidence was overwhelming that the specifications drafted by Hill and ultimately utilized by the County and Interpace as part of the Interpace Contract, including those for class IV wire, were well within the standard of professional care owed by a design engineer in its contractual relationships.[31]

---

30 Interestingly, the County's own engineer, Mike Flanery, used the *same specifications* both before and after this project and allowed the use of class IV wire. (V. 84 at 12471-476).

31 If accepted, the "guarantee theory" of the trial court would usher in an age of unlimited liability for all engineers or architects submitting design plans to be administered by contractors and others. This very concern was acknowledged in *E.C. Goldman, Inc. v. A/R/C Associates, Inc.*, 543 So.2d 1268 (Fla. 5th DCA), *rev. denied*, 551 So.2d 461 (Fla. 1989), as one which would curtail the entire profession of consulting services, contrary to the public policy of this state. The engineer or architect would be cast as responsible party for the defect-free functioning of numerous components

b. *Hill did not breach its contract in relation to pipeline pressure.*

The County's ghost-written final judgment hints that Hill breached a contractual duty by failing to design a pipeline for operation at 150 psi. This is another baseless conclusion.[32] The Hill Contract incorporated the design assumptions of the County's Master Plan, which called for 100 psi operating pressures only.[33] In any event, Hill specified (and in turn Interpace manufactured) pipe segments in fact designed to operate at 150 psi, with a protective surge component to 210 psi. (V. 128 at 19043 pp. 15060-1 [REV]; *Id.* at 19045. The County consistently has operated the pipeline at or below 100 psi anyhow. (V. 83 at 12238-240, 12246, 12293).

---

31 cont. manufactured by difference companies located in different places across the country.

32 The County's evidence on this point is not a breach of a 1975 contract which called for 100 psi pressures, but rather the speculation that pressures to 150 psi may be required at some time in the future. (V. 83 at 12236-239; V. 84 at 12388, 12499-501).

33 Other components of the pipeline such as meters, not just the pipe segments, were also designed to operate below 150 psi. (V. 42 at 27704, 27705; V. 99 at 14786). This integrated pipeline project was never conceived by Hill or the County to *operate* at 150 psi, whatever operating pressure over 100 psi the pipe segments may have been manufactured to withstand.

APPENDIX X

Excerpts from Answer Brief of Appellee, PINELLAS COUNTY, to Initial Brief Of Appellant, CH2M HILL

X - 2

DISTRICT COURT OF APPEAL
STATE OF FLORIDA
SECOND DISTRICT

MADISON MANAGEMENT GROUP, INC., and CH2M HILL SOUTHEAST, INC.,

Appellants,

v.

PINELLAS COUNTY, FLORIDA,

Appellee.
_____/

On Appeal from the Sixth Judicial Circuit, for Pinellas County, Florida

Case Nos. 90-2027 and 90-2028
(Consolidated)
(Case No. 90-2027)

ANSWER BRIEF OF APPELLEE, PINELLAS COUNTY, TO INITIAL BRIEF OF APPELLANT, CH2M HILL SOUTHEAST, INC.

John T. Allen, Jr.
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
Petersburg, Florida 33711
(813) 321-3273

Alan C. Sunberg
Sylvia H. Walbolt
CARLTON, FIELDS, WARD, St. EMMANUEL, SMITH & CUTLER, P.A.
One Harbor Island Place
Post Office Box 3239
Tampa, Florida 33601
(813) 223-7000

Michael J. Keane
BAYNARD, HARRELL, MASCARA, OSTOW & ULRICH, P.A.
Suite 1202
100 2nd Avenue South
St. Petersburg, Florida 33732
(813) 894-5335

Attorneys for Appellee, Pinellas County

ARGUMENT

Point One

The Engineer Was Correctly Held to be Liable for Breach of Contract

Lacking in-house technical expertise to design and supervise the manufacture of the prestressed pipe to be used in its pipeline, the County turned to the Engineer for these services. The Engineer promised not only to design the pipeline but also to undertake certain specified steps in an effort to ensure that its design specifications were actually met. (*See* AS 2). These steps are clearly spelled out in the "Contract Documents" — documents that were in every instance prepared by the Engineer and that include, according to the Engineer's own definitions, Interpace's contract with the County and the specifications themselves. (AS 1). The Contract Documents form the contractual framework that knitted together the respective responsibilities of the Engineer and the pipe manufacturer to the County on this project.

Central to this framework were the specifications prepared by the Engineer, which detailed the *performance* requirements for the pipe and the *qualities* of *materials* to be furnished in its manufacture. In the specifications, the Engineer prescribed how its design was to be achieved, and it identified each element necessary to achieve that design, from manufacture of the pipe to laying it in the ground. Then, to assure that its specifications were satisfied, the Engineer carefully provided checks and balances in each of the Contract Documents *it prepared* — its contract with the County, the specifications it drew up for the County, and Interpace's contract with the County — which, if properly executed, would enable the Engineer to detect defective or non-conforming materials in the pipe *prior to* its installation underground.

As the evidence and trial court's findings make clear, the Engineer never implemented those checks and balances. Had the Engineer carried out its oversight responsibilities, Interpace's defective pipe would have been detected before it was ever put into the ground. Realizing this, the Engineer seeks to avoid responsibility by recasting its obligations to the County. Simply put, the Engineer seeks to erase the obligations set forth in the

Contract Documents it prepared for the construction of this pipeline.

The Engineer makes two arguments in this regard. The Engineer first asserts that the obligations it assumed in its agreement with the County with respect to the work of "the contractor" did not mean the work of the pipe manufacturer because, according to the Engineer, the County did not at that time contemplate contracting with the pipe manufacturer. The Engineer also disclaims all responsibility as "the Engineer" under the Interpace contract, merely because it was not a formal signatory to it — even though the Engineer had prepared that contract, had expressly defined itself as "the Engineer" in that contract, and had granted itself the right to act for the County *under that* contract. By these strained arguments, the Engineer claims that it had no duty to perform any duties with respect to the manufacture of the pipe, including the duties it had imposed upon "the Engineer" in the Interpace contract to ensure that the pipeline it designed was provided by the manufacturer.

The trial court correctly found the Engineer's contentions to be without merit in fact or in law. The court determined that the Contract Documents should be read together to determine the Engineer's duties to the County, but it further found that, *even* under the Engineer's contract *alone*, the Engineer assumed specific oversight duties as to the manufacture of the pipe. Thus, reviewing those contracts *both* together *and* independently, the court concluded that the main duty of the Engineer was to ensure that Interpace complied with the specifications.

As the trial evidence demonstrated and the trial court found, the Engineer did not perform its oversight duties. The court determined that the Engineer was therefore "just as responsible as Interpace for a grossly defective pipeline being placed into service." (AJ 159). It did not err in reaching that result. In fact, the Engineer does not even take issue on this appeal with the vast majority of the breaches that were found by the trial court, and those unchallenged findings alone require affirmance of this judgment.

1. *The Trial Court Correctly Construed the Two Contracts In Pari Materia to Determine the Duties Owed By the Engineer to the County*

Florida courts have long recognized that two or more writings evidencing an agreement must be construed together. *J.M. Montgomery Roofing Co. v. Fred Howland, Inc.*, 98 So.2d 484, 486 (Fla. 1957). As the Supreme Court's decision in *Montgomery* makes clear, this is true where, as here, the instruments concern the same subject matter, even though they are not executed at the same time by the same parties for the same purpose.

In *Montgomery*, the plaintiff subcontractor contracted with the defendant general contractor to perform certain roofing, sheet metal, and ventilation work. The general contractor subsequently executed an agreement with another subcontractor to provide the same ventilation work. When the plaintiff, which did not do any ventilation work, demanded payment for the work it did perform, the general contractor claimed an offset for the ventilation work provided by the other subcontractor. Refusing to view the two construction contracts in isolation, as the Engineer would have this Court do, the Supreme Court squarely held that the trial court should have interpreted the two subcontracts together to determine the duties the plaintiff owed to the general contractor:

> While the situation does not fall strictly within the rule that where an agreement is evidenced by two or more writings, the writings must be construed together, it has been said that "This rule is not necessarily confined to instruments executed at the same time by the same parties for the same purpose; instruments entered into on different days, but concerning the same subject matter, may under some circumstances be regarded as one contract and interpreted together."

Id. at 486 (citations omitted).

The trial court's decision to likewise construe these contracts in pari materia was founded upon the very factors that were central to the decision of the *Montgomery* Court. First, the County's contracts with the Engineer and Interpace were part and parcel of the same pipeline project. Second, these contracts concerned the same subject matter, namely, the design and manufacture of prestressed pipe for that same project. Third, the same County official executed both contracts on behalf of the County. Finally, the contracts

were of the same dignity, with both parties directly contracting with the County to provide services necessary to give the County the pipeline it required. Under those circumstances, *Montgomery* requires the contracts to be interpreted together, exactly as the trial court did.

Other Florida courts have held the same effect.[7] This Court's decision in *Northwestern Bank v. Cortner*, 275 So.2d 317, 320 (Fla. 2d DCA 1973), is especially instructive. Cortner had executed a guarantee with a bank promising to satisfy, up to a certain limit, debt obligations between the bank and another party. Some 30 days later, the bank executed a loan agreement with the other party. Construing the two written agreements together, this Court held that the guarantee was conditioned upon the bank's performance of certain obligations in the loan agreement, which the bank did not do. *Id.* at 320 (citing *Fink*, 174 So.2d at 38; *Baker*, 207 So.2d at 1300).

In *Cortner*, as in this case, the agreements were not executed at the same time nor were they between the same parties. Nevertheless, this Court read them in pari materia. The trial court's decision to construe the County's contracts with the Engineer and with Interpace together was completely consistent with this controlling precedent as well as *Montgomery*.

Moreover, additional considerations exist here that further mandate construction of the two contracts together. When the County and the Engineer entered into their contract in 1975, the parties clearly contemplated that a later contract or contracts would follow. The Engineer specifically included a provision in that contract specifying that it would prepare those additional contracts as well as the contract specifications for the project. (AS 2,

---

7 *See, e.g., Earman Oil Co. v. Burroughs Corp.*, 625 F.2d 1291, 1297 (5th Cir. 1980) (applying Florida law); *Cushman v. Smith*, 528 So.2d 962, 964 (Fla. 1st DCA 1988); *Miami National Bank v. Fink*, 174 So.2d 38, 40 (Fla. 3d DCA), *cert. denied*, 180 So.2d 658 (Fla. 1965); *cf. Baker v. Maytag*, 207 So.2d 300, 303 (Fla. 3d DCA 1968) (although court was faced there with construction of multiple contracts executed by same parties, court noted that applicable law in Florida extended rule construing contracts together to multiple contracts executed by different parties at different times).

item A). Pursuant to this requirement of its contract, the Engineer prepared not only Interpace's contract with the County, but also the specifications and bid proposal for the manufacture of the pipe. (AS 1). The Engineer's own expert acknowledged that the Engineer's preparation of both contracts required their consideration as a whole. (R 25183-85). The point is, the Engineer composed the contractual framework and defined the rights and obligations of *all* of the parties, including itself, with respect to the pipe manufacture. In doing so, the Engineer specifically placed itself in the County's shoes under the Interpace contract by defining itself there as "the Engineer" and then obligating "the Engineer" to act as the representative of the County. The Engineer cannot now escape liability for failing to perform duties that, by its own drafting, it undertook to perform.

For example, the Interpace contract specified various means for the Engineer to ensure the manufacture of the pipe was performed in accordance with the specifications. The contract required Interpace "[t]o permit a representative of the County, and/or its Engineers...to inspect the work and progress, or any of the materials," and also required Interpace to furnish "all reasonable facilities, labor and materials deemed necessary by the Engineer, for the conducting of such inspections and tests as he may require." (AS 1, §G-3(6)). Likewise, that contract provided that Interpace was required to have its materials tested by entities approved by the Engineer and to "furnish evidence satisfactory to the Engineer that the materials and finished articles have passed the required tests prior to delivery." (AS 1, §C-03(b)). All invoices from Interpace were subject to review and approval by the Engineer. (AS 2, item B-3).

In addition to those duties that the Engineer affirmatively imposed upon itself and hence assumed under the Interpace contract, the Engineer further provided in that contract that Interpace was responsible for defective materials "even though such materials may have been previously inspected by the Engineer and accepted or estimated for payment." (AJ 138-39; R 5992-93; AS 1, §C-03). This provision obviously would not have been included by the Engineer if it did not intend to assume the obligation to inspect the materials used in the pipe manufacture. The Engineer can hardly complain that it is being held accountable for the oversight

responsibilities that it specifically wrote into these contracts for itself.[8]

On their face, then, the Contract Documents — defined by the Engineer to include the Interpace contract — encompassed the entire project, including the manufacture of the pipe. Equally clear is the Engineer's obligation to see that the "intent of the Contract Documents" was achieved, which included, at the most fundamental level, the obligation to see that the pipe was manufactured in accordance with its specifications.

The Engineer attempts to avoid responsibility for the defective pipe by claiming that its contract with the County, read alone, does not encompass the manufacture of the pipe. The Engineer asserts that the term "contractor" in its contract with the County does not mean Interpace and that the term "construction" does not include manufacture of the pipe. In short, the Engineer seeks to divorce the installation of the pipe from its manufacture, even though the specifications encompass *both* the manufacture and installation of the pipe.

It is true that, as the trial court recognized, the Engineer did not expressly define the terms "contractor" and "construction" in its contract with the County. These terms are defined, however, in the Engineer's specifications, which are expressly incorporated in the agreement between Interpace and the County, and those definitions — selected solely by the Engineer — should be used in construing those same terms used by the Engineer in its own contract with the County. These definitions leave no doubt that the Engineer's contract with the County obligated the Engineer to perform the specified duties with respect to Interpace's manufacture of the pipe.

---

8 This is especially the case since the Engineer admittedly undertook to perform some of those checks, albeit not properly. *See Cushman*, 528 So.2d at 965 (court found two contracts executed at different times by different parties constituted agreement for sale of property in part because all parties complied in part with the requirements of those contracts); *see also General Trading Corp. v. Burnup & Sims, Inc.*, 523 F.2d 98, 101-02 (3d Cir. 1975) (architect who prepared contract between owner and contractor and assumed duties during course of construction assigned to architect in that contract held liable for failing to properly perform those duties).

For example, the AWWA C301-72 standard, which is an integral part of the Engineer's specifications, defines "contractor" as "the company executing the contract with the purchaser to furnish pipe and fittings according to this standard." (AS 3, §1.2.2). "Construction" is specifically defined in the Engineer's specifications as "*manufacture* and delivery." (AS 1, §B-01(a-5)). The bid proposal prepared by the Engineer not only identifies *Interpace* as the "Contractor," it was executed by Interpace as the "Contractor." (AS 1, pp. E-1, E-9). The duties that the Engineer specified for itself in its contract regarding the "construction" work of "the contractor" must be read in light of those definitions. To do otherwise would be to blindly ignore the Engineer's own contractual scheme set forth in the "Contract Documents."

This Court should not allow that unwarranted disregard of the Contract Documents. Apart from the settled teachings of the Florida Supreme Court in *Montgomery* and this Court in *Cortner*, courts in other jurisdictions have specifically determined that an agreement between an owner and a construction contractor is directly relevant to construing ambiguous terms in the contract between the owner and the project's architect or engineer.[9] The decision of the Mississippi Supreme Court in *Dickerson Construction Co. v. Process Engineering Co.*, 341 So.2d 646 (Miss. 1977), is directly on point.

In *Dickerson*, an owner sued the contractor and architect-engineer for breach of contract as a result of structural deficiencies in the building. In its contract with the owner, the engineer promised to "endeavor by general administration of the construction contracts to guard the Owner against defects and deficiencies in the work of contractors." *Id.* at 650. The engineer's argument that the term "general administration" did not require supervision of construction was *rejected* by the court, which held that "the agreement between Owner and Contractor becomes particularly relevant" in determining the meaning of such a term. *Id.* at 650-51.

---

9 *See, e.g., Reber v. Chandler High School District, No. 202*, 13 Ariz. App. 133, 474 P.2d 852, 855 (1970); *Walker v. Wittenberg, Delony & Davidson, Inc.*, 241 Ark. 525, 412 S.W.2d 621, 630 (1966).

The court emphasized the fact that the engineer had prepared *all* the contract documents, just as the Engineer did here. Under the owner's contract with the contractor, the engineer was authorized to act as the owner's representative during construction, to reject work, to certify payments during construction, and to conduct periodic visits to determine if the work was in accordance with the contract. In light of those duties, the court found unconvincing the narrow contractual construction urged by the engineer with respect to its contract with the owner.

These duties are *precisely the same duties* provided for the Engineer under the County's contract with Interpace. (*See* AJ 144-46). Indeed, the Engineer was explicitly authorized, by name, to act on behalf of the County under that contract. To suggest, as the Engineer does, that it nevertheless had no obligations with respect to the manufacture of the pipe flies in the face of the very Contract Documents it prepared, which, read as whole, plainly establish to the contrary.[10] The reasoning of the *Dickerson* court is eminently sound, and it demonstrates the correctness of the trail court's rejection of the Engineer's attempted reading of its contract in isolation.

The Engineer relies heavily upon *Bernard Johnson, Inc. v. Continental Constructors, Inc.*, 630 S.W.2d 365 (Tex. Civ App. 1982), where the contractor sought to assert contractual claims against the architect although there was no contract between them. The court

---

10 Moreover, if the Engineer had no responsibility with respect to the manufacture of the pipe, it was then guilty of an independent act of professional malpractice. The Engineer undeniably agreed in its contract with the County to prepare adequate contracts for this project, and it did prepare the Interpace contract. The County was entitled to rely on what the contract drafted by the Engineer expressly said. The Engineer later maintained that its name had been inserted by "mistake" — its own mistake! But mistake is the stuff negligence claims are made of — it does not take an intentional wrongdoing to make a professional liable in tort for malpractice. And, if the Engineer did not intend to perform the oversight responsibilities designated for the Engineer in that contract, it certainly was guilty of malpractice in failing to tell the County this so it could retain someone else to perform those responsibilities. (*See* AJ 159-61).

found "in these circumstances" that the duties assumed by the architect in the contract between the owner and the contractor could not be enforced *by the contractor*. *Id.* at 370. Of course, that is not what the trial court did either. To the contrary, the trial court allowed Contract Documents, prepared by the Engineer on behalf of the County as the owner, to be enforced *by the County*.

Significantly, in *this* very different regard, the *Johnson* court recognized that *"any duty or power assigned to the architect in the building contract is for the benefit of the owner who employed the architect."* *Id.* at 371. This critical distinction is directly applicable here, since the County seeks to enforce only those duties that the Engineer expressly assigned to itself, for the County's benefit, in the Interpace contract. Under *these* circumstances, the *Johnson* decision supports the County, *not* the Engineer.

The Engineer also relies heavily upon the "reasoning" in *Lawrence v. United States*, 378 F.2d 452, 461-62 (5th Cir. 1967). However, this was not *the court's* reasoning at all, much less its holding. Instead, it was the reasoning of the *appellant* in *arguing* that the court should not construe its contract with the Government together with the contract between the Government and the construction contractor — an issue that the court itself never reached. The court did note, however, that the question of interpreting either a single contract or series of contracts together was determined by what the parties intended through the "form and manner [of the words] employed." *Id.* at 462. That is consistent with the rule in Florida as expressed in *Montgomery* and *Cortner*, as well as the trial court's findings in this case.

All of the other cases cited by the Engineer are equally inapposite.[11] This holds true for *OBS Co. v. Pace Construction Corp.*, 558

---

11 Jenkins v. City Ice & Fuel Co., 118 Fla. 795, 160 So.2d 215, 217 (1935) (supplier not entitled to enforce contract with previous owner of business against subsequent owner); *In re Donner's Estate*, 364 So.2d 742 (Fla. 3d DCA 1978) (former wife not entitled to equitable lien against widow's dower despite deceased husband's breach of divorce agreement in antenuptial agreement with widow); *Ogden v. Groves*, 241 So.2d 756 (Fla. 1st DCA 1970) (employees not bound by terms of second oral contract when they were not present when it was made even though they were parties to previous oral contract with same party).

So.2d 404 (Fla. 1990). Relying on an express incorporation by reference clause, the Florida Supreme Court found an ambiguity in the payment terms in the two cross-referenced contracts. Contrary to the Engineer's assertion, however, the Court did *not* adopt any blanket rule limiting the circumstances in which contracts can be construed together to only contracts that are incorporated by reference. Indeed, any such argument is belied by the decisions in *Montgomery* and *Cortner* on this specific issue; those decisions made it clear that the trial court properly construed the two contracts in pari materia to determine the scope of the Engineer's duties to the County.

2. *The Engineer's Contract Independently Imposed Duties Upon It That Were Breached.*

Even reading the Engineer's contract with the County in strict isolation as the Engineer urges, that contract independently required the Engineer to see that the pipe provided by Interpace conformed to the Engineer's specifications. In fact, the Engineer expressly agreed under that contract to "[p]rovide consultation and advise as to...laboratory testing and inspection of samples or materials,...and act as the [County's] representative in connection with any such services." (AS 2, item A(1)). These services could *only* be performed during the manufacturing process itself.

Furthermore, the Engineer was obligated under that contract to check "the contractor's shop drawings" for general conformity to the plans and specifications. (AS 2, item B(2)). The Engineer admittedly reviewed *Interpace's* shop drawings, as well as Interpace's submittal sheets (R 9504-06), thus treating Interpace as the "contractor." Likewise, the Engineer was obligated under its contract to approve the pay requests of "the contractor," and it approved the pay requests of *Interpace* throughout the manufacturing process. (R 14411; Ex. 1171; AS 2, item B(3)). The court concluded, with unimpeachable logic, that if Interpace was "the contractor" as to *those* duties, it was also "the contractor" with respect to the *other* duties imposed in that contract. (AJ 136).

In truth and fact, the Engineer treated Interpace as "the contractor" — whose performance it was obligated to judge — from the start of this project to its end. In addition to receiving information from Interpace regarding the construction of the pipe, the Engineer's project manager actually visited Interpace's manufacturing plant on various occasions throughout the manufacturing

process. (Ex. 767A-F, vol. I, p. 35). Although he remarkably claimed at trial that his visits were only out of "curiousity" and were not intended to protect the County's interests (R 14461, 14465.67), the trial court understandable found that these visits were not made out of mere "curiosity" but rather as a part of the Engineer's specific agreement to visit the construction site on a regular basis. (AJ 157-58).

In sum, the Engineer's work was *not* limited to the installation of the pipeline, but actually commenced at the very outset of this project and continued throughout the manufacturing process itself. Given all these circumstances, the trial court correctly found that the Engineer had undertaken the responsibility to monitor the manufacture of the pipe to assure its conformance to its specifications.[12]

The Engineer ignores the obligations it undertook in order "to effect proper carrying out of the intent of the contract documents" and argues instead that it was only required to, and did only, monitor the *installation* work. Nowhere in its contract with the County, which the Engineer prepared, did it limit its obligations to the County to oversight of the installation of the pipeline, and any ambiguity as to its responsibilities must be construed *against* the Engineer as the drafter of its own contract.[13] Reading the Engineer's contract to include oversight of the pipe manufacturing process within the Engineer's responsibilities is the only rea-

---

12 Experts for *both* the County and the Engineer agreed that manufacturing defects can not be effectively detected without visiting the manufacturing plant. (R 25187; AT 168). If, as the Engineer suggests, it had no responsibility to oversee the manufacturing process, the Engineer then breached its promise to advise the County with respect to services necessary to ensure the pipe was constructed according to the specifications. The court's finding of this breach is unchallenged. (AJ 159-61).

13 *Coastal Caisson Drill Co. v. American Casualty Co.*, 523 So.2d 791, 792 (Fla. 2d DCA 1988), *approved*, 542 So.2d 957 (Fla. 1989).

sonable construction of the obligations set forth in that contract.[14] This is especially the case since the Engineer acted consistently with that construction. The trial court did not err in concluding that the Engineer obligated itself to see that the pipe it had designed and specified was manufactured in conformance with the design and specifications.

3. *The Engineer Failed To Perform Its Contractual Duties.*

As shown above, the Engineer was contractually required — both under its contract read alone and the contracts read in pari materia — to monitor Interpace's work and take the necessary steps to ensure that Interpace complied with the specifications. As the trial court correctly found from the overwhelming evidence, the Engineer breached those duties. The checks and balances provided by the Engineer were not properly implemented. Had they been, they would have protected the County from becoming another victim to Interpace's quality-cutting and profit-enhancing scheme.

First, *before* the County even engaged Interpace — upon the Engineer's recommendation — all bidders, including Interpace, were required to submit to the Engineer a list of similar past jobs. Interpace did so. (AS 1, p. E-11). However, the Engineer *never* checked Interpace's references. (R 9518). If the Engineer had done so, it would have discovered that Interpace's proposed use of Class IV wire had been rejected on another project because it did not conform to ASTM standards. (R 5876-81, 10047-54). By failing to check the very references it had insisted upon, the Engineer failed to provide the oversight that would protect the County against deficiencies in the contractor's work. (AT 170).

Second, the Engineer likewise failed to properly review critical information in the submittal sheets Interpace provided to the Engineer prior to the County's execution of the contract with Interpace. The reviewing engineer admitted that he did not check all of the design formulas set forth in the submittals (R 9523-50) and thus did not discover that they were inadequate to produce pipe that would operate at 150 psi working pressure as the

---

14 Courts will not adopt an unreasonable construction of a contract. *Excelsior Insurance Co. v. Pomona Park Bar & Package Store*, 369 So.2d 938, 941 (Fla. 1971).

specifications required. (R 9523-50; AT 177). Nor did the Engineer discover that the materials Interpace intended to use failed to meet the national standards specified by the Engineer. Yet the obligation to review and approve those submittals was indisputably one of the Engineer's primary responsibilities.

Even after the contract was awarded to Interpace, the Engineer still had a chance to protect the County from the disastrous consequences of Interpace's use of defective, non-conforming materials. The specifications expressly required Interpace to perform wire and concrete tests specified under national standards and to then submit these test results to the Engineer. (AS 1, §15060, p. 15060-2; AS 1, §C-03; AS 3, §1.9). Interpace did not provide any such test results, and, astonishingly, the Engineer never requested them. (R 19926-27; AT 177).

Had these test results been submitted as required, the Engineer would have had time to correct any deficiencies. (R 5989-91). Indeed, the Engineer obviously wrote this provision into the Interpace contract precisely to assure a timely opportunity to see that the pipe was manufactured in accordance with its specifications. But, since the Engineer failed to require Interpace to submit those test results to it, the Engineer never learned of the deficiencies in the wire and concrete Interpace used.

The Engineer remarkably asserts that it did not breach its contract by allowing Class IV wire to be used because that wire satisfied the standards incorporated in its specifications. The Engineer does no more than reargue its case below, attacking the wealth of evidence at trial, which was accepted by the trial court, as merely "a chorus of so-called expert voices."[15] In fact, as the evidence plainly establishes, Interpace's "hybrid" Class IV wire did *not* conform to the national standards. The experts disparaged by the Engineer included, among others, the metallurgist who developed some of the first prestress wire in the United States and who

---

15 In contrasting the trial court's treatment of its experts, the Engineer points to the trial court's acceptance of Mr. Edmunds' expert opinion, apparently suggesting that this demonstrated bias in favor of the County. Nowhere in its brief, however, does the Engineer argue to this Court that the trial court abused its discretion in admitting Mr. Edmunds' testimony.

Interpace asked to show it how to make prestress wire (R 4872), as well as the chief U.S. Steel metallurgist who authored parts of a book considered to be "the bible" of the steel industry. (R 21790-91). Their testimony was unequivocal that AWWA C301-72, which expressly incorporates
ASTM A227-71, did *not* permit the use of Interpace's Class IV wire. (R 11813-18, 21843-47).

Seeking to refute that expert testimony, the Engineer and Interpace presented testimony of representatives on the AWWA committee that the AWWA standard included Class IV wire. But it is uncontroverted that the *ASTM* sets wire standards in the first instance, *not* the AWWA, and the *ASTM committee member* who testified at trial was unequivocal that *that* committee refused to sanction this application of Class IV wire on both occasions Interpace requested its approval. (R 11587-11602). In another case involving Interpace's scheme, the Fourth Circuit affirmed a finding that Interpace's Class IV wire did not satisfy those national standards, pointedly observing there was no need for Interpace to request the ASTM committee's approval of the use of Class IV wire if it already was within the standards. *See City of Richmond v. Madison Management Group*, 918 F.2d 438, 447 (4th Cir. 1990).

In short, the "overwhelming evidence" on this factual dispute supported the County, not the Engineer. The trial court appropriately found, based on this evidence and consistent with the findings affirmed in *City of Richmond*, that Class IV wire did not comply with the national standard specified by the Engineer for the pipeline. (AJ 67-72).

The Engineer further argues that there was no breach of its contract as a result of the fact that the pipeline's operating pressure was only 100 psi, not 150 psi. The Engineer contended that the County's ten year Master Plan set the requisite operating parameters for this pipeline. As the Engineer had to concede, however, *its specifications* required an "operating pressure of 150 psi" for this pipeline. (R 13578; AS 1, §15060, p. 15060-1).

The Engineer's design engineer acknowledged that this specification designated the "maximum operating pressure at which the pipe is actually going to be operated." (R 13587, 13703). His testimony is consistent with the AWWA C301-72 definition incorporated by the Engineer into the Contract Documents, which states that the operating pressure the Engineer specified means the

pressure at which the line normally will be operated. (AS 3, §1.2.7.). Thus, the *specifications* the Engineer prepared for *this particular project* admittedly required a pipeline operating pressure of 150 psi, and the Engineer promised to judge the performance of the work according to the *specifications, not* the County's Master Plan.

The Engineer also conceded, as it had to, that this was the requirement "between Interpace and the County in that particular contract." (R 9661). As the court recognized, the design parameters in *that* contract were specified by *the Engineer*, and the Engineer would hardly have specified operating criteria that it had not in fact designed. If that were somehow the case, the Engineer should have so informed the County — especially since the County relied on those design parameters in contracting with Interpace. (*E.g.* R 12467-68). The Engineer did not do so, and it should not now be permitted to renounce the specified operating pressure.

Had the Engineer properly checked all of the design formulas set forth in the submittal sheets Interpace provided to it, it would have determined at the outset that the specified operating pressure would not be achieved. (R 7356-60; AT 177). But the Engineer did not implement the very check it had provided in order to protect the County. (R 9523-50). The trial court certainly did not err in finding that the Engineer breached its contract in this critical regard. (AJ 153).

The fact of the matter is, the Engineer was lulled by Interpace's long-time reputation in the industry and, for that reason, it did not take the necessary steps to protect the County against deficiencies in Interpace's work. (R 9202). Instead, the Engineer utilized personnel on this project who lacked expertise as to prestressed concrete pipe, and those persons then simply "went through the motions" of overseeing the manufacture of this pipeline. (R 9198, 14350-52, 14438). The Engineer's failure to exercise the vigilance it had been retained to provide permitted Interpace to use defective, non-conforming materials that resulted in the pipeline's premature failure. (AT 177). The trail court's findings as to the Engineer's serious breaches are well supported by the evidence, and they should not be disturbed on appeal.

One final point must be emphasized. *Many* of the contractual breaches found by the trial court (AJ 135-67) are *not* complained of on appeal. Because the Engineer has asserted no challenge to those findings, their correctness is conclusively estab-

lished. *Hillsborough County Aviation Authority v. Walden*, 196 So.2d 912, 913 (Fla. 1967). The judgment must be affirmed in light of these independent, unchallenged findings.

APPENDIX Y

Excerpts from Reply Brief of Appellant, CH2M HILL

Y - 2

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

Case No. 90-02027 and 90-2028

CH2M HILL SOUTHEAST.,

Appellant,

vs.

PINELLAS COUNTY, FLORIDA,

Appellee.
_____/

Reply Brief Of Appellant
CH2M Hill Southeast, Inc.

On Appeal From A Final Judgment
Entered In The Sixth Judicial Circuit
In And For Pinellas County, Florida

Bull and Haggard
Suite 1200
111 North Orange Avenue
Orlando, Fl 32801

Arthur J. England, Jr., Esq.
Fla. Bar No. 022730
Linda A. Wells, Esq.
Fla. Bar No. 231861
Charles M. Auslander, Esq.
Florida Bar No. 349747
Fine Jacobson Schwartz Nash
Block & England
One CenTrust Financial Center
100 Southeast 2nd Street
Miami, Florida 33131-2112
(305) 577-4000

II. Hill is not liable to the County under any theory of law.

A. Hill is not liable for breach of contract.

1. No merger of contracts.

The County has made two grave and deliberate omissions in its response to this issue. First, it has neglected to address the unrebutted fact that Hill's contract performance was limited to two, discrete activities, the first of which dealt exclusively with design services complete prior in time to Interpace commencing its manufacture of the pipe components (Item A services), and the second of which dealt with installation phase services (Item B services) which expressly stated that Hill did not guarantee the contractor's performance and which expressly excluded materials' testing and inspection services. Second, the County ignores the fact that it did not engage Hill to perform "resident engineering" services and, in fact, the County itself performed those services and inspected the pipe manufacturing process.

By turning a blind eye to the express divisions in the Hill Contract and the express proviso rejecting any obligation to test materials, the County has framed an insidious argument which concludes that Hill was to supervise and master the intricate process of producing component materials for the pipe. The underpinning of that argument consists of record citations to Item A services (relevant only to design of the pipeline) and to Item B services (related primarily to line installation) — contract provisions having nothing to do with oversight of the manufacturing process at Interpace's plant. Only by misusing these contract provisions is the County able to urge its hypothesis that the "contractor" identified in Hill's contract Items A and B is the equivalent of Interpace, and that the Hill Contract should be merged with the Interpace Contract for inspection duties.

The County's merger fiction runs hard up against the language of the Interpace Contract, which time and time again references Interpace as the "supplier" or "manufacturer", and not as a contractor. The few "contractor" references within the numerous pages of this agreement cannot reasonably be rationalized as manifesting Hill's intent — two years before the Interpace Contract was reformulated by the County and signed — that Interpace be equat-

ed with the term "contractor" in Hill's prior contract with the County. The fact is that the County's gerry-rigged Interpace Contract contained errors in draftsmanship, based largely on the fact the County switched gears to buy the pipe directly from Interpace rather than follow the customary method of hiring a general contractor to purchase and install the pipe.[16] The idea that the Hill and Interpace Contracts should be merged is based on the grand delusion that the "contractor" designation in both contracts legitimately refer only to Interpace.

The County's brief also conveniently omits any reference to the unchallenged facts that it — the County — performed all resident engineering services at the pipeline construction site, observed the manufacturing process, and tested pipe components manufactured by Interpace. That course of performance by County personnel vividly demonstrates that it personally undertook virtu-

---

16 Contract references to Interpace as the "supplier" are legion. Those references are found in sections C-05 on payment, G-1 (the contract itself), G-4 on supplier progress payments, the General Requirements work summary of the "pipe supplier", (01010-1), the shop drawings clause for the "pipe supplier," (01010-3), and the Pipe and Fittings term for "pipe manufacture," (15060-1) (Rev), etc. (V. 128 at 19043). Numerous passages contrast duties of the pipe supplier (Interpace) with those of the contractor (Bumby & Stimpson). The section on Measurement and Payment (section 01900) refers to the "pipe supplier" and the distinct "installation contractor." (01900-1). Section 15060-2 (Rev) requires the "manufacturer" to provide reference identifications to the "contractor." Section 01010-3 advises that preconstruction conference attendees shall include "the Contractor for installation and the pipe supplier..." (V. 128 at 19043).

Additionally, the "General Construction Requirements" sections refer to contractor duties clearly not within the scope of Interpace's services. These include a "stake-out survey by the Contractor" and keeping "[a] copy of the contractor's field book." "The Contractor" is directed to have suitable instruments on the job "of each pipe-laying operating at all times." (15090-1)(rev). This summary perusal of the Interpace Contract shows it clearly envisioned Interpace to be the manufacturer or supplier, and the installation contractor (Bumby & Stimpson) to be the "contractor".

ally all of the engineering services identified in the Interpace Contract which are *now* said to have been Hill's obligations. The facts are (I) that the County knew (or should have known more) of the failings regarding Interpace's pipe segments that it now proclaims Hill should have guarded against, and (ii) that Hill had no contractual responsibility to guarantee against them. In short, there is no factual legitimacy to the County's attempted "merger" of the Hill and Interpace Contracts on either of the dual themes that Interpace was the designated contractor, or that Hill's authorship of the draft contract later used for the Interpace Contract identified duties which Hill were obligated to perform.

The County badly distorts the time and space context of the judicial decisions it cites in support of its merger theory. In one "supporting" citation, the Florida Supreme Court addressed a circumstance of two subcontracts entered on successive days by the same officer of a general contractor with two distinct subcontractors to perform the same services. *J.M. Montgomery Roofing Co. v Fred Howland, Inc.*, 98 So.2d 484 (Fla. 1957). In this odd circumstance, which the Court candidly acknowledged was not a natural one for application of a merger theory that normally requires identical parties to each agreement, the Court did no more than reverse a summary judgment and recommend that the trial court review the second agreement as parol evidence of the intentions of the parties to the first. That unremarkable result is elevated by the County into a grossly distorted, new theory for applying the merger doctrine to two contracts signed two years apart!

A second case actually proves the opposite of what the County proposes it established. In *Northwestern Bank v. Corner*, 275 So.2d 317 (Fla. 2d DCA 1973), the court construed together the terms of a loan agreement and a loan guarantee agreement executed only five days apart. [17] The opinion finds merger in a situation where, at the time the first-in-time guarantee was signed, the parties (including the guarantor) had already negotiated the terms of the second-in-time loan agreement which were later reflected in that agreement and proved to be appropriate defenses to payment of the guarantee.

---

17 The County's brief has misread the opinion to suggest that the two agreements were executed thirty days apart.

This proves the exact opposite of what the County wants to prove. When the first-in-time Hill contract was negotiated with the County, it was expressly understood that the "contractor" referenced would be a traditional general contractor for both the pipe component purchase and pipe installing functions. (V. 77 at 11325-326). The Interpace Contract signed two years later had completely different terms and parties.

Other citations footnoted in this section of the County's brief are also off the mark. Only one warrants rebuttal discussion, since the County uses it both for merger and course-of-performance arguments. *Cushman v. Smith*, 528 So.2d 962 (Fla. 1st DCA 1988), involved a property sale where multiple sellers and one buyer/lessee exchanged contracts identical but for the name of the buyer. That was the only difference in the two agreements. The *Cushman* case patently has no relevance to an alleged merger or course-of-performance involving distinct contracts, years apart, differing in every term, in which performance on the first is satisfactorily concluded by a non-signatory to the second contract.

Another supposed "course of performance" case is also utilized incorrectly by the County, to make the point that an

> architect who prepared [a] contract between owner and contractor and assumed duties during course of construction assigned to [the] architect in that contract [was] held liable for failing to properly perform those duties.

(ABH at 20, n.8), *citing, General Trading Corp. v. Burnup & Sims, Inc.*, 523 F.2d 98 (3rd Cir. 1975). *General Trading* does not support the stated proposition. First of all, the decision reflects only that the owner and general contractor utilized a standard "AIA" contract, not that the architect prepared that agreement. Secondly, there was no express agreement between the owner and the architect. That is, the architect's duties were not definitively expressed in a contract between the owner and contractor. That document contained only a generalized expression of design conformity with certain applicable zoning requirements. The owner's negligence action against the architect rode strictly on the design services performed by the architect for the owner. That case does not involve — as does the present — a non-party drafter not bound by the contract's terms, where that non-party had a separate agreement iden-

tifying the scope of its obligations to the owner. The County uses *General Trading* like its other caselaw references, to create doctrines for liability out of whole cloth advocacy, and not from a reasoned analysis of decisional law.

Weakly related to the County's notion that the two agreements should be merged, or that the Hill Contract along obligated its to supervise the manufacturing process, are out-of-state cases cited for the contention that a court may construe "ambiguity" in an owner-architect contract by reference to the owner-construction contractor agreement. The threshold problem with this thesis is that the owner-engineer contract here is not ambiguous. The Hill Contract was divided into four discrete chronological phases, and the County is mixing apples and oranges when it seeks to imply manufacturing supervisory obligations into the terms governing design functions — especially when there exists an express negation of any responsibility for materials testing even within the scope of *construction*-related not manufacturing site duties. Nothing in these several out-of-state precedents would suggest that those courts or this court would reject the unambiguous terms of the Hill Contract, or ignore an express reservation against the testing of materials.

A further doctrinal reason differentiates those cases from this. Each involves claims of negligence against design architects where a reference to the general contractor's agreement was used to evaluate only a standard of care, not a contract obligation. In the case which appears to be a leading precedent in this context, the court found an architect *not* to have a duty to supervise the construction site in order to protect employees of general contractors from job-related injuries. *Reber v. Chandler High School District*, 474 P.2d 852 (Ariz. 1970). Interestingly, reference to the general contractor's agreement in *Reber* was unnecessary since the architect's contract terms negated any such supervisory obligation.[18] In a similar case, *Walker v. Wittenberg, Delony & Davidson, Inc.*, 412 S.W.2d 621 (Ark. 1966), the court looked to the general contractor's agreement to find that it was responsible for on-site supervision which precluded any inference of a duty on the part of the architect.

---

18 In *Dickerson Construction Co. Inc. v. Process Engineering Co. Inc.*, 341 So.2d 646 (Miss. 1977), the court did use a "general administra-

These cases connote that a supervisory tort will arise when the architect or other design professional has the right to exercise day-to-day control over the manner in which the details of construction work are performed. *Reber*, 474 P.2d at 854. More traditional contractual clauses reflecting supervisory or inspection obligations of an architect are *not* deemed to establish this duty. This is instructive in regard to the County's contention that the contractual, four visits to the construction site found in Item B services under the Hill Contract created an obligation to supervise manufacturing plant services. *Reber* and its progeny dovetail quite well with Hill's position that a four-times-per-month presence at the construction site could hardly have in a practical sense contemplated oversight for manufacturing defects of Interpace. Since there was no contract obligation (or tort duty) for Hill to supervise manufacturing, there was certainly none to undertake an investigation into the fraudulent scheme the County claims was pursued by Interpace.

2. <u>No design breach in specifying AWWA C-301-72</u>.

County experts asserted at trial that class IV wire was not authorized under AWWA C-301-72, since by its terms it incorporated

referred to only one location for construction services and contained specific requirements that the contractor consult with the architect or have him present at the job site prior to undertaking certain tasks. In that very narrow circumstance, the court found reference to the general contractor's agreement supported a tort claim against the architect.ASTM A-227. The "plain meaning" premise of these experts is readily rejected from the very language of AWWA specification C-301-72, which states that:

> wire with specified minimum tensile strengths exceeding those in A-227, Class II, may be used if the wire meets the other requirements for Class II in that specification, *and the pipe design may be based on these higher strengths.*

---

18 cont. tion of construction contracts" clause in the architect's agreement to find negligent breach of a supervisory duty over the work site. In that instance, however, the construction contract definitively

(V. 128 at 19041) (emphasis added). 19 As noted by Hill but ignored by the County, one of the County's own experts acknowledged that class IV wire can and does pass all specific A-227 test requirements. (HIB at 57). The interpretation of some County experts that C-301-72 only allows wire reaching the maximum ceiling for class II wire distorts the language of the standard, and is belied by the drafters of C-301-72. It also raises the rhetorical question: Why would AWWA C-301-72 do more than simply identify ASTM 227 if wire strengths already encompassed by ASTM 227 were all that it intended to permit?

The factual flaw in the County's reliance on ASTM standards, which discuss only classes I and II wire, is that ASTM sets only the general standard for mechanical wire. The AWWA standard, however, applies general wire standards to the manufacture of wire to be used in prestressed concrete pipe. The use of manufactured wire in pipelines is appropriately controlled by a standard specifically related to pipe manufacture — AWWA.

History is also relevant here. Hill prepared its design specifications for this project in 1976. In 1973, the ASTM committee had adopted a new standard specification — ASTM A648-73 — directly applicable to wire used in prestressed concrete pipe. ASTM 648-73 specifically references three classes of wire with minimum tensile strengths only, not maximums. (V. 128 at 19046). Although the AWWA standard had not yet been modified to acknowledge expressly the existence of ASTM 648-73 (since the AWWA committee had not by 1976 revised C-301), AWWA C-301-72 does make clear that ASTM documents containing "superseding specifications under a new number" — which would include ASTM 648-73 — shall apply. (V. 128 at 19041, § 10204). The County experts who testified uniformly relied on the outdated concept of a class II ceiling in ASTM 227.

---

19 There is no disagreement on the fact that class IV wire has a higher minimum tensile strength than class II wire, and it can be manufactured to meet all class II requirements set forth in A-227.

Much of the "expert testimony" put on by the County on the AWWA-ASTM debate supported the conclusion that class IV wire was permissible. One of their experts conceded that in 1968 he was producing class III and class IV tensile strength wire as an acceptable component for prestressed concrete pipe which had tensile strengths exceeding class II maximums. (V. 79 at 11687-690). This expert conceded that an argument could be made that under the open ended ASTM-648 standard, higher tensile strengths (such as those normally associated with class IV) could be argued to fall under class III. (V. 79 at 11637-639). Bethlehem Steel, for example, sold wire well into the class IV tensile strength range which was satisfactorily incorporated in prestressed concrete pipe. (V. 79 at 11637-639).

There can be no question that in 1976, when Hill designed this pipeline, AWWA allowed the use of class IV wire in prestressed concrete pipe. This was precisely the sentiment of the only three witnesses who sat on the AWWA committee which authored C-301 (HIB at 57).

The County heavily relies for its anti-class IV wire argument on *City of Richmond v. Madison Management Group*, 918 F.2d 438 (4th Cir. 1990). This is not surprising, but badly misplaced. That case is not germane to the County's claim against Hill. The City of Richmond did not sue the design engineer. The design engineer's representative did not require class IV wire , and a standard of care regarding class IV wire was never addressed. *Id.* at 450, n.9. That case dealt only with Madison's having fraudulently induced the City to purchase pipe manufactured with a class IV wire which Madison knew could *not* meet proper performance standards, according to the jury's findings. There is nothing in that decision regarding a design engineer's standard of care in designating class IV wire — a vastly different issue of liability.

3. <u>No breach concerning operating pressure</u>.

With regard to another alleged design defect, the operating pressure of the pipeline, the County badly distorts the record facts. The 1973 master plan for the pipeline system (and the 1979 update) clearly evidenced that the line would be operated at pressures not exceeding 100 psi. (V. 219 at 26961; V. 224 at 27214). The evidence showed that the County would have had to make major modifications in the entire system in order to operate it at the 150 psi pres-

sure claimed at trial to be the requirement it had demanded. (HIB at 60, n. 33). In any event, the pipeline had passed numerous tests in which it sustained 150 psi pressures or above, (HIB at 11), and the laboratory test performed by County experts *post*-project (for litigation purposes) — intended to prove the fragility of the pipeline — actually proved the contrary when it did not blow until pressures exceeding 400 psi were reached. (V. 35 at 5164-69, 5213-17; V. 48 at 7165-66).

Nor did the specifications call for 150 psi operating pressures for the pipeline. Rather, they called for the *pipe segments* (not the pipeline) to be manufactured to meet 150 psi operating pressures with surges to 210 psi. (HIB at 60). This design was based on Hill's careful engineering, to ensure adequate safety margins above the master-plan-intended 100 psi pressure levels for normal operation. (V. 65 at 9630-31, 9661-62). No prudent engineer would require pipe manufacturing pressure equal to but not in excess of the normal operating pressure in the pipeline.

APPENDIX Z

Appellant's Initial Brief

Z - 2

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

PINELLAS COUNTY, FLORIDA
Appellant,

-vs- Appeal No. 93-01203

INTERPACE CORPORATION;
CLEVEPAK CORPORATION;
MADISON MANAGEMENT
GROUP, INC., as successor of
INTERPACE CORPORATION;
and CH2M HILL SOUTHEAST,
INC.,
Appellees.
_____/

APPELLANT'S INTIAL BRIEF

JOHN T. ALLEN, JR., ESQ
John T. Allen, Jr., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
FBA No. 1284

and

MICHAEL J. KEANE, ESQ.
FBA No. 257516
SARAH M. CHAVES, ESQ.
FBA No. 350095
Baynard Harrell Ostow &
Ulrich, PA
Post Office Box 180
St. Petersburg, FL 33731
Attorneys for Appellant

TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2-3
STATEMENT OF FACTS	4-9
SUMMARY OF THE ARGUMENT	10-11
ARGUMENT	
I. THE TRIAL COURT IMPROVIDENTLY RESTRICTED THE ISSUES TO BE TRIED ON THE RETRIAL OF THIS ACTION.	12-18
A. The Doctrine Of Law Of The Case Mandates A Retrial Of Those Issues Not Appealed And Not Decided.	19-21
II. THE EFFECT OF JUDGE RIVES' DECISION IS TO DENY PINELLAS COUNTY FUNDAMENTAL CONSTITUTIONAL RIGHTS.	21-22
CONCLUSION	23
CERTIFICATE OF SERVICE	24

TABLE OF CITATIONS

	PAGE
Atkins v. Litsinger, 513 So.2d 178 (Fla. 2d DCA 1987)	13
Barry Hinnant, Inc. v. Spottswood, 481 So.2d 80 (Fla. 1st DCA 1986)	20
Bolt v. Smith, 594 So.2d 864 (Fla. 5th DCA 1992)	12
CH2M Hill Southeast, Inc. v. Pinellas County, 598 So.2d 85 (Fla. 2d DCA 1992)	2
Coleman v. Florida Insurance Guaranty Ass'n, 517 So.2d 686 (Fla. 1988)	13
Fickle v. Adkins, 394 So.2d 461 (Fla. 3d DCA 1981)	22
Goodman v. Olsen 365 So.2d 393 (Fla. 3d DCA 1978)	20
Guerrero v. Humana, Inc. 548 So.2d 1187 (Fla. 4th DCA 1989)	22
Prevatt v. Prevatt 462 So.2d 604 (Fla. 2d DCA 1985)	13
Psychiatric Associates, P.A. v. Siegel, 567 So.2d 52 (Fla. 199)	21, 22
Sax Enterprises v. David and Dash, Inc. 107 So.2d 612 (Fla. 1958)	20, 21
Scholastic Systems v. LeLoup, 307 So.2d 166 (Fla. 1974)	22

PAGE

Tri Par Land Development Corp. v. Henthorn, 29
241 So.3d 429 (Fla. 2d DCA 1970)

Two M Development Corp. v. Mikos, 10, 19, 20
578 So.2d 829 (Fla. 2d DCA 1991)

Whack v. Seminole Memorial Hosp., Inc., 12
456 So.2d 561 (Fla. 5th DCA 1984)

Williams v. Dolphin Reef, Ltd., 13
455 So.2d 640 (Fla. 2d DCA 1984)

Wilson v. Pest Control Comm'n, 22
199 So.2d 777 (Fla. 1st DCA 1967)

OTHER AUTHORITIES

Article 1, Section 21, Florida Constitution 21

PRELIMINARY STATEMENT

Appellant, PINELLAS COUNTY, a political subdivision of the State of Florida will be referred to as "Pinellas County."

Appellee, CH2M HILL SOUTHEAST, INC., a civil engineering firm, will be referred to as "Hill."

On May 21, 1993, this Court entered an order taking judicial notice of the entire appellate record arising from the first appeal in this litigation. That appellate record will be designated (R_).

The post-mandate record arising from the proceedings following this Court's decision and mandate in *CH2M Hill Southeast, Inc. v. Pinellas County*, 598 So. 2d 85 (Fla. 2d DCA 1992) will be designated (PR_).

Reference to Appellant's Appendix will be designated (A_).

STATEMENT OF THE CASE

On March 13, 1992, this Court rendered its decision, reversing a money judgment in favor of Pinellas County against Hill, in *CH2M Hill Southeast, Inc. v. Pinellas County*, 598 So. 2d 85 (Fla. 2d DCA 1992 ("*Hill I*").

The judgment against the manufacturer and civil engineer followed a nearly one-year long trial and concerned 13.5 miles of defective large diameter prestressed concrete pipe. That pipe transports over one-half of Pinellas County's daily water distribution needs.

The main focus of this Court's opinion in *Hill I* concerned the issue of disqualification of the sitting trial judge. *Hill I*, at 86-88. Holding that the trial court should be disqualified, this Court reversed.

Recognizing that certain issues could be resolved as a matter of law and within this Court's scope of review, the *Hill I* Court then made three important rulings. First, it determined that Pinellas County could not bring a negligence action against Hill, the professional engineers. Second, the Court held that the contract between Pinellas County and Hill on one hand and Pinellas County and Interpace, the pipe manufacturer, on the other hand — should not be merged so as to impose additional duties on Hill. Third, the *Hill I* Court opined that the Hill Contract imposed no duties on Hill to physically oversee the pipe manufacturing process. at 88-89.

Having disposed of those questions, this Court remanded for a new trial on the lone issue which Hill appealed, which could not be resolved as a matter of law, namely, whether Hill breached its contract by permitting the use of Class IV wire on Pinellas County's pipeline. *Id.* at 89.

The remand of this issue for retrial was appropriate because the disqualification of the trial judge had the effect of unraveling the entire first trial. The parties were then positioned as though no trial had occurred in the first instance.

On March 3, 1993, the new trial judge conducted the first meaningful post-*Hill I* mandate proceedings. At the hearing before the Honorable Howard P. Rives, both parties presented their views of the issues remaining to be tried. (PR 260-284)

Pinellas County urged that, in addition to the Class IV wire issue, several other breach of contract issues had been ini-

tially pled and should be retried. Because these issues had never been addressed to the Second District Court of Appeal in *Hill I*, Pinellas County maintained the doctrine of law of the case required no less. (PR 267-75)

On the other hand, Hill seized upon the language in *Hill I* directing retrial of the single wire issue, and argued that Judge Rives was constrained to try only that issue. (PR 277-78)

Misconceiving the proper application of the law of the case doctrine, the trial court accepted Hill's argument and entered the Final Partial Judgment, limiting the issue for retrial to the Class IV wire question. (PR 284-85)

Pinellas County appeals that post-mandate Final Partial Judgment and the denial of the Motion for Rehearing of it. (PR 243, 247)

STATEMENT OF FACTS

Pinellas County filed this lawsuit in 1983 against Hill and others, seeking money damages because a critical 13.5 mile water distribution pipeline was riddled with defects. (R 19382-394) The suit seeks replacement of the entire pipeline because of the massive defects and the critical function which it serves. (PR 4-49)

Hill, as predecessor to Black, Crow & Eidsness, was the civil engineer charged with substantial responsibilities as part of the project team. Hill is the one remaining defendant. The manufacturer is mired in the United States Bankruptcy Court.

Hill served for many years as the primary outside engineering consultant for the County. On March 27, 1975, Hill entered into a contract with Pinellas County to provide engineering services concerning the pipeline which is now the subject of this case. (R 1942, Exhibit 2; A Tab 1 pp. 1-12)

Among the duties which Hill assumed under its contract with Pinellas County were:

1) to staff itself with qualified personnel;

2) to make a route selection survey;

3) to do preliminary and final design plans and specifications;

4) to consult and advise regarding the need for subsurface exploration;

5) to consult and advise regarding laboratory testing of samples or material;

6) to consult and advise regarding inspection of samples or materials;

7) to act as the County's representative regarding any exploration, testing or inspection;

8) to prepare complete bases of design;

9) to prepare and furnish contract drawings, forms, specifications, schedules of quantities and detailed cost estimates;

10) to confer with and receive approval from other applicable agencies of government;

11) to advise prospective bidders, suppliers of construction materials, and equipment manufacturers;

12) to attend bid openings and make engineering recommendations regarding the award of contracts;

13) to visit the construction site 4 times per month on average;

14) to determine if work proceeded in accordance with contract documents;

15) to endeavor to protect the Owner against defects and deficiencies in the work;

16) to check shop drawings and description date as to general conformity to plans and specifications;

17) to approve pay estimates;

18) to consult and advise Pinellas County;

19) to issue Owner instructions to the contractor;

20) to prepare routine change orders;

21) to interpret the terms and conditions of the Contract Documents and judge the performance of them; and

22) to recommend final acceptance of the job. (A Tab 1, pp. 2-4)

After the first section of pipe burst in 1979, the County undertook an extensive investigation which was actually concluded many months after the institution of this lawsuit. (*See, e.g.*, Exhibit 71, R 19388) Based on the investigation, the County framed a Complaint. The first Amended Complaint set forth, among other things, the contract claims against Hill for breach of its direct contract with the County. (PR 4-49) (A 13-59) The Complaint alleged in excess of forty (40) failings by Hill all of which constituted departures from the contractual undertakings described above. Not only were these extensive breaches alleged — each were proven by the overwhelming weight of evidence presented in the first trial.

Specifically, only one Hill Contract issue, namely, the failure of Hill regarding Class IV wire, was ever appealed in *Hill I*. (PR 73-151)

The County offered proof at trial that J. M. "Dink" Henderson was the Hill engineer charged with design, approval of the materials, drafting of specifications and contract documents and other significant responsibilities. Henderson, the proofs reflected, had little experience (R 9197-9201, 9206-08, 9214-15, 13635-40, 13645, 13658-60); failed to account for groundwater and soil conditions; approved Interpace submittals and shop drawings — even though he knew little or nothing about Class IV wire, the national standards, or the design formulas. Henderson admitted that he did not check any of the design calculations submitted by Interpace before he signed off on them. (R 9465, 9503-04, 9514-17; 9522-9539, 9544, 9240, 9242-43, 9922-23, 9397-9402, 9507-11, 9512; 9566-67; 9579-82, 9598-99, 13702, 13713-15, 13728)

An expert for Construction Testing Laboratories testified that a review of the design formulas reflected that they were improper and that they revealed values which reflect that Brooksville aggregate could not be used. (R 7329-47) Hill engineers knew that Interpace intended to and did use Brooksville aggregate. (R 9541)

The pipe was underdesigned as to the working pressure of the pipe which should have operated sufficiently at 150 psi with an additional 60 psi surge protection. (R 9754; 9641-63)

The shop drawings Henderson reviewed cite a

national standard, ASTM A648-73. (R 19045) That national standard was not specified by Hill in the specifications Hill drew and is not sanctioned by the controlling *prestressed concrete pipe national* standard AWWA-C-301-72. Henderson ignored or failed to recognize this important deviation. (Exhibit 1, R 19041, 9507)

The shop drawings reflected Interpace's intent to use 17 gauge steel cylinders while 16 gauge should have been used. Hill missed this requirement as well. The effect of this error was that the pipe was under wrapped with wire, the key strength component of the pipe. (R 5906-07, 5911, 5915-17, 7460-61)

Hill approved the pipeline for final payment without requiring any test reports, mill reports, final affidavits or certificates of compliance from Interpace. (Exhibit 399, R 19448)

Hill ignored evidence of low ph in the groundwater in the environment in which the pipe was to be installed and, consequently, failed to recommend needed epoxy coating of the pipe. (Exhibit 326, R 19436, 10444)

Hill failed to conduct its required 4 visits to the job site on average per month. Had it done so, it could have readily detected improper curing of concrete and mortar by stencil markings on the inside of the pipe. (R 6001-02, 14629-35)

Hill failed to insist that the manufacturer submit material testing reports which the specifications required. Consequently, Hill never even received valuable information needed to discharge Hill's contract. (R 9955-56, 7463)

These proofs in many respects went unchallenged during the first trial. Taken together, they present a massive breakdown by Hill in the performance of its contract with Pinellas County. Each of these matters of pleadings and proofs call for resolution by a trier of fact. *None were appealed.*

The chart at Pages 15-18 of this Brief reflects a capsule of the contract issues raised by the pleadings and their appellate disposition. Simply put, Hill did not address even the tip of the breach of contact iceberg in its appeal in *Hill I.*

After the *Hill I* mandate issued, a hearing was conducted before Judge Howard P. Rives, the newly assigned judge.

Pinellas County presented the court with a packet of information including the First Amended Complaint, Hill's brief in *Hill I*, and this Court's decision in *Hill I.* (PR 1-151) Pinellas County urged that the *Hill I* directive to try only the Class IV wire issue had

to be read in context. The trial court was urged to consider the *Hill I* decision in light of the issues the *Hill I* Court was asked to decide. Because the *Hill I* Court had never been given the other contract issues to decide — its decision could not be read to pass on them. Further, the County urged, the procedural posture of the case was such that no fact issues were resolved in *Hill I* because the trial had been rendered a nullity. (PR 265-75)

Counsel for Hill urged a strict reading of *Hill I* and that this Court must have meant what it seemed to have said. (PR 277)

The trial court, misconceiving the effect of the law of the case doctrine, rejected Pinellas County's position and ruled that all other contract issues, whether or not appealed and considered, were foreclosed from consideration at the retrial. (PR 243, 284-85) This appeal ensued.

SUMMARY OF THE ARGUMENT

In *Hill I*, this Court reversed and remanded this case for a second trial, after disposing of certain issues as a matter of law and determining that the trial judge should have stepped down during disqualification proceedings.

The remand was for a new trial on the only fact issue which Hill appealed to this Court. Significantly, this Court was never asked to nor did it pass upon a host of other asserted contract breaches by the Engineer.

The law of the case doctrine makes clear that any issue not appealed and hence not decided is open for retrial after remand. *Two M Development Corp. v. Mikos*, 578 So. 2d 829 (Fla. 2d DCA 1991).

Common sense and logic suggest that if the Class IV wire issue was returned for retrial to a new trier of fact — then all other like contract issues, especially since they were never appealed — also merit a new trial. Thus, if for example, Pinellas County is entitled to a trial against the Engineer for allowing Class IV wire to be used on the pipe, it follows that Pinellas County should also have its day in court because the Engineer allowed the incorrect cylinder steel or aggregate to be used on the pipe.

Therefore, because Hill elected to raise only select issues for appellate consideration, it cannot now be heard to suggest that those issues never raised, decided, or tried should somehow have been concluded in its favor in *Hill I*.

To accept Hill's position would be to deny Pinellas County its day in court. Florida's guarantee of access to the courts and notions of due process require that litigants in Florida have the opportunity to be heard. Now that the first trial has been undone, Pinellas County is entitled to a trial on those issues which no trial judge or jury have decided and which this Court has never considered — because it was not asked to. Had the request been made in *Hill I* for review of the additional unmentioned contract breaches, the appropriate disposition was a remand for new trial just like the one contract breach which Hill did raise — the Class IV wire question.

In sum, a clarification of the issues to be tried is sorely needed.

ARGUMENT

I. THE TRIAL COURT IMPROVIDENTLY RESTRICTED THE ISSUES TO BE TRIED ON THE RETRIAL OF THIS ACTION.

In the face of the horrendous expense incurred to date, the public interest which is implicated, and the further judicial labors required — a proper definition of the issues remaining to be tried is imperative.

By focusing on certain language that this Court wrote in *Hill I* and not on the appellate issues actually decided in *Hill I*, the trial court has simply missed the mark by so narrowly restricting the issues which remain for disposition on retrial.

When this Court determined that the trial judge in *Hill I* erred by failing to step down under Florida rules pertaining to the disqualification of trial judges, the effect was clear. The final judgment was necessarily vacated and a new trial was required. The parties were returned to the same position they occupied immediately prior to the commencement of the first trial. Stated another way — the impact of the disqualification of the trial court is that for all practical purposes no trial ever happened. *See Bolt v. Smith*, 594 So. 2d 864 (Fla. 5th DCA 1992); *Whack v. Seminole Memorial Hosp., Inc.*, 456 So. 2d 561 (Fla. 5th DCA 1984)

Therefore, all issues which were up for grabs at the commencement of the first trial remain so — unless this Court disposed of any particular issue as a matter of law in *Hill I*.

Indeed, this Court did remove from consideration the negligence claim, the merger issue, and the contractual obligation of Hill to physically oversee the manufacturing process. These issues, this Court recognized were within the scope of its review function. Id. at 87-88.

Regarding the only issue appealed which required a resolution by a factfinder, the *Hill I* Court returned for a new trial:

> Additionally, the County asserted that Hill had reached its contractual design responsibilities by allowing the pipe manufacturer to use Class IV wire for the pipeline. That is an issue of fact which

must be determined in a new trial. Id. at 89 (emphasis added).

Nowhere in *Hill I* did this Court purport to conduct a factfinding mission or to otherwise usurp the role of the trial judge or jury, as the case may be. Instead, the *Hill I* Court paid careful attention to the boundaries of the appellate review function and sent back the one question appealed which this Court could not properly decide. *E.g. Coleman v. Florida Insurance Guaranty Ass'n*, 517 So. 2d 686 (Fla. 1988); *Atkins v. Litsinger*, 513 So. 2d 178 (Fla. 2d DCA 1987). Had this Court, for example, determined that the overwhelming evidence demonstrated a breach of contract by Hill for allowing unsanctioned, defective, outlawed wire to be used — no one would disagree that such a decision would do violence to respective functions of the trial and appellate courts of Florida. *Prevatt v. Prevatt*, 462 So. 2d 604 (Fla. 2d DCA 1985); *Williams v. Dolphins Reef, Ltd.*, 455 So. 2d 640 (Fla. 2d DCA 1984).

In logic, had any other fact issues been brought to the attention of the *Hill I* Court — without doubt this Court would have similarly sent those fact issues back for a retrial. Yet, the effect of the order on review and position urged by Hill on March 3 suggests the contrary.

At the hearing before Judge Rives, the initial appellate brief submitted by Hill in *Hill I* was filed which reflects the actual issues raised for consideration. (PR 77-151) The summary of the argument to this Court outlines only one Hill Contract issue for review — the use of Class IV wire. (PR 91-92) The argument portion of the Hill brief also raised only the Class IV wire issue as the sole contract question dependent on findings of fact. (PR 93-151)

The impression which the *Hill I* Court may have gleaned from among the 14,000 pages of transcript, 265 volumes of record and the Hill brief was that Class IV wire was the only breach of the Hill Contract asserted. To the contrary, however, the First Amended Complaint, on which the case was tried, asserts a host of contract failures by Hill. (PR 41-49; A Tab 2 pp. 51-59)

For example, just as Pinellas County contended that its engineers slept at the switch while a non-conforming seriously defective wire was included in the pipe other serious departures from standards and specifications occurred.

Prior to the commencement of pipe manufacture, Interpace sent a specification sheet to Hill for review. The Hill Contract expressly required the engineer to provide consultants and advise regarding laboratory testing and inspection of materials. It also required Hill to inspect shop drawings and to endeavor to protect the County against defects and deficiencies. It required Hill to judge the performance of Interpace.

Indeed, Hill undertook to do so. Following is the first page of the Interpace submittal:

INTERPACE Corporation | SPECIFICATION | NO. LC-77-1-1

FOR 60" PRESTRESSED CONCRETE EMBEDDED CYLINDER PIPE W/RUBBER & STEEL JOINT (SP-12)
WATER SYSTEM IMPROVEMENTS
PINELLAS COUNTY, FLORIDA
BLACK, CROW & EIDSNESS, INC. - ENGINEERS

SZE DRAWING INTERPACE Engineering Manual, Section 1, Pg. 7, Section 1, Page 9

Nominal Pipe Diameter - inches	60	60
Class Designation	A	A
Approximate Footage - feet	59,435	
Min.Cyl. t - ASTM A-569 (Min. Yield = 27,00 psi); or A-570-72 Gr. B or C; or A-611-72 Gr.C. or E-inch	0.0538	0.0538
Nominal Cylinder Diameter - inches	63	63
Cylinder Test Pressure - psi	43	43
Wire Size - ASTM A 227-71 and A 648-73	#8	#8
Wire Class	IV	IV
Wire Area - sq.in./ft. = (A_s)	0.403	0.437
No. of Wraps of Wire - per ft.	19.56	21.21
Min. Ultimate Wire Strength - psi = (f_{su})	293,000	293,000
Wire Wrapping Stress - psi = (f_{sg})	219,750	219,750
Dynamometer (1 wire) - lbs.	4,530	4,530
($A_s f_{sg}$) = (.75 $A_s f_{su}$) - lbs/lf. (See Note A)	88,559	96,031
Pressure at zero concrete compression - psi	171	178
Resultant Compression in Concrete - psi	1,090	1,330
Min. compressive strength of concrete at time of wrapping (Rodded or Vibrated Cylinders) - psi		
Core Thickness (including cylinder) - inches	4-1/2	3-3/4
Min. Coating Thickness - inches	7/8	7/8

Zinc Coated Joint Rings:		
Spigot Ring Width - inches	6-1/4	4-1/4
Bell Ring - inches x inches	1/4 x 6	1/4 x 6
Joint Depth - inches	4-1/4	4-1/4
Creep - feet	0.03	0.03
Average Laid Length - feet	20.03	20.03

Calculation Date: $n_i = 7.0$, $n_r = 6.0$, $R_1 = 0.05$, $R_2 = 0.05$, $C_r = 2.00$

Design Conditions: In Accordance with AWWA Specification C301-72		
Design Pressure - psi	150	150
Water Hammer Allowance - psi	60	60
Max. Cover - feet	6	6

NOTES:
1. All bevels and outlet pipe to be manufactured with 4-1/2" core.
2. For details on special fittings see Specification Sheet LC-77-1-4 and 5.
3. BELL BOLT Joints to be manufactured

NOTE A: Should material shortages require use of alternate size or strength wire, wire area, No. of wraps, wrapping stress and Dynamometer values will be varied as required to maintain the value of (Asfsq) as shown.

LJ06012160 LJ06012170

COMPILED____CHECKED____APPROVED____DATE_____

It reflects the sign off by Dink Henderson, the Hill engineer, in charge of design. Henderson, the proof at trial reflected, was woefully inexperienced, knew nothing of Class IV wire or much of anything else about SP-12 Interpace Prestress Concrete Pipe.

The specification sheets he reviewed and approved reflected improper standards references; improper cylinder steel; and should have raised all manner of sirens, red flags, bells and whistles regarding the aggregate to be used. Henderson and Hill knew Brooksville aggregate was to be used on Pinellas County pipe. The specification sheet reflects modular ratios that *could not* be achieved with Brooksville aggregate.

These claims were pled and substantial proofs exist and were offered as to each. Each claim requires a sifting of evidence and resolution by a trier of fact. Yet none of these issues were considered by the *Hill I* Court.

The following table capsulizes the Hill Contract claims and their appellate disposition:

STATUS OF BREACH OF CONTRACT ISSUES

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
1	Engineer responsible for duties imposed by manufacturing contract with Pinellas County	Yes	Reversed without remand
2	Engineer had duty to inspect manufacture of pipe	Yes	Reversed without remand
3	Engineer breached contract by allowing use of Class IV wire in pipe manufacture	Yes	Reversed and remanded for new trial

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
4	Engineer breached contract by failing to direct properly, to perform or to have performed soil survey investigations including, soil resistance to the flow of electric current, total soil acidity, soil drainage (ground water fluctuations), soil texture, soil microbial activity and soil chemistry	No	None
5	Engineer breached contract by failing to direct properly, to perform or to have performed corrosion testing to determine effects of local soil corrosion conditions on the rate of corrosion of pre-stress steel wire embedded in mortar	No	None
6	Engineer breached contract by failing to direct properly, to perform or to have	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	performed investigations of the pipeline route for stray electrical currents, low soil resistivities and aggressive soil and groundwater conditions		
7	Engineer breached contract by allowing specifications that did not require the wire to the ductile	No	None
8	Engineer breached contract by approving pipe designs with inadequate safety factors	No	None
9	Engineer breached contract by failing to review design calculations for the individual sections of pipe	No	None
10	Engineer breached contract by allowing the manufacturer to specify ASTMA-648-73, which is not recognized nor sanctioned in AWWA-	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	C-301-72		
11	Engineer breached contract by approving the use of 17-gauge cylinder steel instead of the specified 16-gauge cylinder steel	No	None
12	Engineer breached contract by specifying only absolute minimum standards and specifications, thereby permitting defective pipe to be made	No	None
13	Engineer breached contract by failing to review all project documents submitted to Pinellas County by the manufacturer	No	None
14	Engineer breached contract by failing to specify or to have performed sufficient inspection and testing of materials used in the manufacture of the pipe to ensure the pipe would be manufactured	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	and delivered as required by the specifications		
15	Engineer breached contract by failing to inquire of the manufacturer concerning the use of admixtures that were used in the manufacture of the pipe	No	None
16	Engineer breached contract by having no knowledge of the use of admixtures and failed to inspect the use of admixtures	No	None
17	Engineer breached contract by failing to require the manufacturer to perform any additional tests not specifically mentioned in the standards and specifications, but necessary to ensure the quality and the safety of the manufactured pipe	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
18	Engineer breached contract by failing to require that test results of the manufacturer and affidavits or certifications of compliance by the manufacturer be supplied for review	No	None
19	Engineer breached contract by certifying completion of the project without receiving affidavits and certifications of compliance	No	None
20	Engineer breached contract by failing to specify acceptance inspection procedures adequate to identify defective pipe	No	None
21	Engineer breached contract by failing to inspect the work properly	No	None
22	Engineer breached contract by failing to identify incorrect pipe	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	loading and unloading techniques		
23	Engineer breached contract by failing to require the manufacturer to provide samples and specimens of pipe manufactured materials as provided for in the standards and specifications	No	None
24	Engineer breached contract by failing to examine and test materials, samples and specimens	No	None
25	Engineer breached contract by failing to require the manufacturer to provide an affidavit and certifications of compliance at the end of the project	No	None
26	Engineer breached contract by failing to require proper repairs to pipe damaged during transportation or	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	installation		
27	Engineer breached contract by failing to detect the pipe coating material was mortar rather than concrete as required in the specification	No	None
28	Engineer breached contract in failing in designing the system to provide for sufficient flexibility which would allow Pinellas County to operate the pipeline at working pressures up to 150 psi	No	None
29	Engineer breached contract by failing to design the system to include a sufficient surge pressure margin or surge protection facilities adequate for the surges which the pipeline will be subjected	No	None
30	Engineer breached contract by failing to	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	design the surge protection facilities properly which were provided, specifically, defective air and vacuum-valve assemblies		
31	Engineer breached contract by failing to take into consideration and to design to prevent the probability that surges would be induced in the pipeline through the operation and the interaction between the Cypress Creek pump station, SK Keller Pump Station, and North Booster station	No	None
32	Engineer breached contract by failing to forewarn Pinellas County that the operation or modification of pumps, motors, drives, valves, actuators, and other appurtenances in the	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
	pump stations, when acting individually or together, could result in damaging surges being introduced into the pipeline		
33	Engineer breached contract by failing to design, recommend, or advise as to the need for instrumentation to monitor for surges which could damage the pipeline and which could be produced by the operation and interaction between the three pump stations	No	None
34	Engineer breached contract by failing to draft a requirement in the contract between Pinellas County and the manufacturer that the manufacturer provide all test results as required to be performed under AWWA-C-301-72	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
35	Engineer breached contract by failing to require in the contract between Pinellas County and the manufacturer an affidavit and certification of compliance as provided for in AWWA-C-301-72	No	None
36	Engineer breached contract by failing to provide provisions in the contract between Pinellas County and the manufacturer that would give a sufficient warranty	No	None
37	Engineer breached contract by failing to provide in the contract between Pinellas County and the manufacturer a proper protection clause and recourse against the manufacturer in the event a defective product was supplied	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
38	Engineer breached contract by failing to inform Pinellas County of its knowledge and understanding that the pipeline would only be expected to last approximately 50 years while the manufacturer consistently maintained that the pipeline would last either indefinitely or at east 100 years	No	None
39	Engineer breached contract by failing to exercise due care in reviewing submittals from the manufacturer which described the prestressed concrete pipe the manufacturer intended to manufacture	No	None
40	Engineer breached contract by allowing the manufacturer to manufacture a lesser quality pipe than was called for in the specifications	No	None

	ISSUES PLEAD BY PINELLAS COUNTY AS BREACH OF CONTRACT	WHETHER ISSUE APPEALED BY ENGINEER	DISPOSITION OF ISSUE
41	Engineer breached contract by failing to reject shop drawings submitted by the pipe manufacturer which included the specification of ASTMA 648-73 which allegedly permitted the manufacturer to use Class IV wire	No	None
42	Engineer breached contract by failing to require the manufacturer to meet the requirements of the contract specifications and of section 1.9 of AWWA-C-301-72, requiring the provision of wire test specimens and other steel test specimens to the purchaser or its agent	No	None

A. The Doctrine Of Law Of The Case Mandates Retrial Of Those Issues Not Appealed And Not Decided.

The remand for retrial of the Class IV wire issue reflects this Court's recognition that any fact questions regarding Hill's performance of its contract are fair game for retrial. Had Hill pointed out to this Court that Pinellas County also challenged Hill's contract performance by allowing the use of improper aggregate, the wrong cylinder steel, the wrong national standards, the wrong mortar coating, the wrong testing protocol, the use of improper coating and so on, the result would have been exactly the same. This Court would have immediately recognized the need for a trial on these issues. But Hill *did not* appeal these contract claims.

And it was not necessary for this Court to specifically direct a retrial on issues it was never asked to consider. The law of the case doctrine supplies the proper direction to trial courts under these circumstances.

In *Two M Development Corp. v. Mikos*, 578 So. 2d 829 (Fla. 2d DCA 1991) this court clearly articulated the law of the case doctrine. In Mikos a disgruntled taxpayer challenged a tax assessment on two grounds. In the first *Mikos* trial, the taxpayer won on a single dispositive claim. This court reversed and remanded for new proceedings, without a clear directive that the taxpayer could have a new trial on the second prong of his attack on the assessment. The trial judge, taking much the same position as Judge Rives has adopted in the instant proceedings, ruled he had no jurisdiction to proceed to trial on the remaining claim. This Court reversed reasoning:

> The doctrine of the law of the case applies to issues that were *actually considered and decided* on a former appeal involving the same action... . In this case, however, we were not asked to nor did we consider the question . . . *Id.* at 830-31 (citations omitted) (emphasis supplied).

As a result, the *Mikos* court held the prior opinion did not preclude the trial court from considering the merits of the open point. *Id.* at 831.

Mikos and the long line of law of the case decisions teach that on remand for a new trial only those issues actually *appealed and considered* are resolved with finality. *Accord Greene v. Massey*, 384 So. 2d 24 (Fla. 1980); *Barry Hinnant, Inc. v. Spottswood*, 481 So. 2d 80 (Fla. 1st DCA 1986); *Tri Par Land Development Corp. v. Henthorn*, 241 So. 3d 429 (Fla. 2d DCA 1970); *Goodman v. Olsen*, 365 So. 2d 393 (Fla. 3d DCA 1978).

In *Sax Enterprises v. David and Dash, Inc.*, 107 So. 2d 612 (Fla. 1958), the Florida Supreme Court had earlier reversed a money judgment and remanded for new trial. Confusion arose after the first remand concerning the effect of the Supreme Court's first decision. The *Sax* court wrote:

> [A] judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided ... *Id.* at 613

The court went on to recognize that in some circumstances a particular holding is implicit in the decision rendered. Then the question may be foreclosed from further consideration. *Id.* at 613.

In the instant case, this extension to the law of the case doctrine has no application. Nothing in *Hill I* remotely suggests that other fact issues regarding Hill Contract breaches have been foreclosed. No issue was appealed and expressly decided which somehow subsumes the remainder of Pinellas County's breach of contract action. Thus, *Sax* and cases like it, which allow for a common sense application of the law of the case doctrine, provide no solace to Hill in this case.

For these reasons, this Court should reverse the Partial Final Judgment and remand with clear directions to the trial court that all breach of the Hill Contract issues fairly raised by the pleadings are fair game for retrial.

II. THE EFFECT OF JUDGE RIVES' DECISION IS TO DENY PINELLAS COUNTY FUNDAMENTAL CONSTITUTIONAL RIGHTS.

Because of the disqualification of the trial judge in *Hill I*, the case has necessarily been returned to the status quo that existed immediately prior to the beginning of the first trial. Again, it is as though no trial has ever been held.

While Pinellas County may respectfully disagree with certain of the *Hill I* rulings on purely legal issues — it recognizes that those issues have been decided after full review. As to those issues never appealed and never decided — Pinellas County has never been heard.

The County has asserted a breach of contract action against Hill for serious departures from the Hill Contract which go far beyond Hill's approval of the wire component of the pipe. As to those questions, Pinellas County has a fundamental right to be heard.

In *Psychiatric Associates, P.A. v. Siegel*, 567 So. 2d 52 (Fla. 1st DCA 1990), a doctor challenged a statute which imposed certain impediments to bringing a state court action. Applying Section 21, Article 1 of the Florida Constitution — Florida's guarantee of access to the courts — the court recognized a litigant's guaranteed right to a forum in which to litigate a recognized cause of action.

The Siegel court approved the dissent in *Guerrero v. Humana, Inc.*, 548 So. 2d 1187 (Fla. 4th DCA 1989) in which Judge Anstead wrote:

> Under the Florida Constitution, access to the courts is a fundamental right.
>
> * * * * *
>
> [C]learly the intent of the access provision is to provide a broad guarantee of access regardless of the nature of the dispute. While the provision may not guarantee a litigant a particular remedy when the litigation is argued, it does guarantee

> a litigant who has a recognized cause of action a forum in which to be heard. 548 So. 2d 1187-88.

In the instant case, if Hill is correct, Pinellas County will be foreclosed from prosecuting the bulk of its common law contract action even though no trial court has ever disposed of the claims on the merits. And certainly this Court in *Hill I* did not do so because the questions were not appealed, briefed, argued, considered or passed upon.

Such a result also offends notions of due process under the State and Federal Constitutions. *E.g., Scholastic Systems v. LeLoup*, 307 So. 2d 166 (Fla. 1974); *Fickle v. Adkins*, 394 So. 2d 461 (Fla. 3d DCA 1981).

In *Wilson v. Pest Control Comm'n*, 199 So. 2d 777 (Fla. 1st DCA 1967), the court quoted Daniel Webster on the essence of due process:

> Due process of law means a law which hears before it condemns, which proceeds upon inquiry and renders judgment after trial ... *Id.* at 780.

All that Pinellas County respectfully requests is the opportunity to be heard on those questions which now have never been heard.

CONCLUSION

Appellant, Pinellas County, contends that the law of the case doctrine and the fundamental right to a trial requires reversal of the Final Partial Judgment. This cause should be remanded with directions to retry all breach of contract issues against Hill, arising under the Hill Contract, which are fairly raised by the pleadings.

Respectfully submitted,

MICHAEL J. KEANE, ESQ.
FBA No. 257516
SARAH M. CHAVES, ESQ.
FBA No. 350095
Baynard, Harrell,
Ostow & Ulrich, P.A.
Post Office Box 180
St. Petersburg, FL 33731
(813) 823-5000

and

JOHN T. ALLEN, JR., ESQ.
John T. Allen, Jr., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273
FBA No. 1284
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to BENJAMIN H. HILL, III, ESQ., Post Office Box 2231, Tampa, Florida, 33601, this day of June, 1993.

_____

MICHAEL J. KEANE

AGREEMENT

BETWEEN

BLACK, CROW & EIDSNESS, INC.
CONSULTING ENGINEERS

AND

BOARD OF COUNTY COMMISSIONERS
PINELLAS COUNTY, FLORIDA

Z - 40

AGREEMENT

THIS AGREEMENT, made and entered into by and between Pinellas County, a political subdivision of the State of Florida, hereinafter called the "Owner," and BLACK, CROW AND EIDSNESS, INC., a nationally known and recognized engineering firm, a corporation chartered and existing under the laws of the State of Florida, hereinafter called the "Consulting Engineers," on the date appearing on the last page hereof

WITNESSETH:

That for and in consideration of the covenants and promises to be carried out by each party herein, it is agreed by and between the parties hereto as follows:

WHEREAS, the Owner contemplates the need for improvements to its water system;

WHEREAS, the Consulting Engineers are staffed with qualified engineering personnel versed in the field(s) of Environmental Engineering as well as other fields of municipal engineering; and

WHEREAS, the Owner has need for the services of the Consulting Engineers in connection with sixty inch water transmission main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973, as well as other services of the Consulting Engineers from time to time for reports, design, professional services during construction and/or consultation;

NOW, THEREFORE, the Owner does hereby employ said Consulting Engineers to perform engineering services in connection with sixty inch water transmission main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973.

The Consulting Engineers agree to make a route selection survey considering at least three (3) separate routes, preliminary design, final design plans and specifications for the project known as Sixty Inch Water Transmission Main as described in the Ten Year Master Plan (Project 271-71-51), revised August, 1973.

These services to include the following.

ITEM A - DESIGN IMPROVEMENTS

Upon receipt of specific written authorization by the Owner to the Consulting Engineers for the design of such improvements as may be designated, the Consulting Engineers will, with reasonable diligence, design authorized improvements specifically as follows:

1. Provide consultation and advise as to the necessity of providing or obtaining other services such as property, boundary, right-of-way, topographic and utility surveys, core borings, probings or subsurface explorations, hydrographic surveys, laboratory testing and inspection of samples or materials, or special consultation, and act as the Owner's representative in connection with any such services.

2. Prepare complete bases of design, together with statements of allowances, assumptions, and factors in order that the Owner may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the project.

3. Prepare and furnish contract drawings, contract forms (subject to the approval of the Owner's attorney), specifications, schedules of quantities, and detailed estimates of cost of the proposed improvements. The detailed plans and specifications will be made available to the Owner in 5 copies. Additional copies will be furnished to the Owner if requested, at the cost of reproduction plus reasonable handling charges.

4. Confer with officials of state or federal agencies having jurisdiction during the preparation of the plans and specifications, and assist the Owner in obtaining approval of the same.

5. Place copies of the plans and specifications on view in the Consulting Engineers' office and in offices of several certified builders' exchanges, and advise prospective bidders, suppliers of construction materials, and equipment manufacturers.

6. Attend bid openings and assist the Owner in tabulating and canvassing construction proposals, and make engineering recommendations in awarding of construction contract or contracts.

It is specifically understood that the services to be furnished under DESIGN OF IMPROVEMENTS do not include property, boundary and right-of-way surveys, or the makings of borings or soil bearing tests.

ITEM B - PROFESSIONAL SERVICES DURING CONSTRUCTION

Upon receipt of specific written authorization by the Owner, following the award of the construction contract for the proposed program of improvements, or undertaking the construction of these improvements by the Owner's forces, the Consulting Engineers will perform the following professional services during construction:

1. An average of 4 visits per month to the construction site during construction to determine if the work is proceeding in accordance with the Contract Documents. By means of these visits the Consulting Engineers will endeavor to protect the Owner against defects and deficiencies in the work of the contractor. This shall not imply guarantee of the contractor's performance.

2. Check shop drawings and descriptive data submitted by the contractor as to general conformity to the plans and specifications.

3. Approval of pay estimates.

4. Consult and advise with the Owner, act as the Owner's representative, issue all instructions of the Owner to the contractor, prepare routine change orders as required and act as interpreter of the terms and conditions of the Contract Documents and judge the performance thereunder. Whenever the Consulting Engineers consider it necessary or advisable to effect proper carrying out of the intent of the Contract Documents, they may, as the Owner's representative, direct the contractor to stop work or require special examination or testing of the work.

5. Prepare and submit routine proposed contract change orders. For purposes of this agreement the term "routine change order" is defined as a change not substantially altering the scope of work.

6. Following a final inspection with the Owner's representatives, representatives of any governmental agencies having jurisdiction, and representatives of the contractor, recommend as to final acceptance of the construction work.

7. Furnish 2 sets of complete prints for each construction contract, showing changes made during the construction process based on information furnished by the construction contractor to the Consulting Engineers.

It is specifically understood that the services to be furnished under PROFESSIONAL SERVICES DURING CONSTRUCTION do not include the testing of materials or the furnishing of resident project representatives, field engineers, and inspection personnel.

ITEM C - RESIDENT PROJECT REPRESENTATION

The Consulting Engineers shall, if authorized by the Owner, furnish the services of a resident engineer and inspectors as required to observe the construction work of the contractor on a daily basis. The said observation of construction shall include field observation field inspection of materials and work, preparation of

details for the prosecution of the work, preparation of daily progress reports, monthly summaries, and the review and verification of all partial and final estimates for payments to contractors. Monthly progress reports shall include the critical path method of reporting.

Through on-site observations of the work and progress, and field checks of materials and equipment by the resident engineer and inspectors, the Consulting Engineers will endeavor to provide for the protection of the Owner against defects and deficiencies in the work, but the furnishing of such resident engineers and inspectors shall not make the Consulting Engineers responsible for the contractor's failure to perform the construction work in accordance with the Contract Documents.

ITEM D - SUPPLEMENTARY SERVICES

If authorized in writing by the Owner, the Consulting Engineers will furnish or obtain from others additional services of the following types:

1. Furnishing property, photogrammetric, boundary, right-of-way, profiles, cross sections, horizontal and vertical surveys, topographic and utility surveys and hydrographic surveys.

2. Soils, foundation and materials engineering services including borings, probings or subsurface explorations, laboratory testing and inspection of samples of materials and other special consultation.

3. Biological consultations, bioassays, ecological impact evaluations and related environmental services.

4. Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Additional services due to significant changes in general scope of the project or its design including, but not limited to, changes in size, complexity or character of construction.

6. Revising previously approved studies, reports, design documents, drawings or specifications.

7. Preparing documents for alternate bids requested by the Owner for work which is not executed.

8. Preparing detailed renderings, exhibits or scale models for project.

9. Furnishing additional copies of reports and additional prints of drawings and specifications.

10. Investigations involving detailed consideration of operation, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by the Owner.

11. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) prolongation of the construction contract time by more than twenty percent (20%); (3) acceleration of the work progress involving services beyond normal working hours; and (4) contract default due to delinquency or insolvency.

12. Additional services and costs necessitated by out-of-town travel required of the Consulting Engineers other than visits to the project as required by this Agreement.

13. Serving as expert witness for the Owner in any litigation or other proceeding involving the project.

14. Additional services in connection with the project not

otherwise provided for in this Agreement.

ITEM E - THE OWNER'S RESPONSIBILITIES

It is understood the Owner will:

1. Provide full information as to its requirements for the project.

2. Assist the Consulting Engineers by placing at their disposal all available information pertinent to the site of the project, including previous reports and any other data relative to design and construction of the project.

3. Designate a person or persons in writing to serve as the Owner's representative with respect to the work to be performed under this Agreement.

4. Guarantee access to and make all provisions for the Consulting Engineers to enter upon public and private lands as required for the Consulting Engineers to perform their work under this Agreement.

5. Examine studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Consulting Engineers and render decisions in writing pertaining thereto within a reasonable time so as not to delay the services of the Consulting Engineers.

6. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.

7. Provide such legal, accounting and insurance counseling services as may be required for the project.

8. Give prompt written notice to the Consulting Engineers whenever the Owner observes, or otherwise becomes aware of, any defect in the project.

9. Obtain approval of all governmental authorities having jurisdiction over the project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the project.

10. Obtain all properties, easements and rights-of-way necessary for the work.

11. Furnish or direct the Consulting Engineers to provide at the Owner's expense, necessary SUPPLEMENTARY SERVICES.

ITEM F - FEES AND PAYMENTS

1. For the route selection survey and those services enumerated under Item A, Design of Improvements, and Item B, Professional Services During Construction, the Owner agrees to pay and the Consulting Engineers agree to accept as full compensation thereof, fees equal to 5.62% of the construction cost.

Construction cost is defined as the actual cost of the work, exclusive of land and right-of-way, engineering inspection, and Owner's overhead.

The Owner may make progress payments in accordance with the A.S.C.E. manual, Reports of Engineering Practice No. 45, 1972. However, a payment of 80% of the total engineering fee shall be due and payable upon completion and submission of final plans and specifications, based upon a detailed construction cost estimate to be submitted with said final plans and specifications, with the understanding that any fees so paid, as computed from the detail estimated cost, will be adjusted to the actual construction costs as these become known. If the Owner deletes a portion of the work from the project after the design of the portion has been completed by the Consulting Engineers, then the fee shall be 4.50 percent of the detailed construction estimate for such portion. If the construction work

does not proceed within a period of twenty-four (24) months after the submission of the detailed plans and specifications to the Owner, then the final fee for design services shall be 4.50 percent of the detailed estimated cost.

Upon submission of the plans and specifications to the Owner, and upon their acceptance, should any revision to change the nature or scope of the work be necessary, the Consulting Engineers shall be compensated for making such alterations and additions to the detailed plans and specifications as authorized by the Owner, said compensation being on a Cost-Plus basis as hereinafter defined.

2. The balance of the fee shall be for Item B, Professional Services During Construction, and shall be paid monthly in proportion to the value of work completed.

3. For services of RESIDENT PROJECT REPRESENTATION (Item C) and inspection, which are authorized, the Owner agrees to pay and the Consulting Engineers agree to accept as full compensation for the furnishing of resident inspection an amount payable monthly equal to the payroll or salary cost of such resident engineer and inspector or inspectors, times a factor of 2.0 to provide general overhead and profit, plus transportation costs of $0.18 per mile. The Owner shall have the right to review and approve the qualifications and salary costs paid to the resident engineers and inspectors.

4. Payment for SUPPLEMENTARY SERVICES (Item D) shall be paid monthly upon presentation of the Consulting Engineer's detailed statement as follows:

Where supplementary services are of a nature so as to be performed by personnel assigned to established offices of the Consulting Engineers, the Consulting Engineers will receive compensation on a Cost-Plus basis as hereinafter defined.

ITEM G - DEFINITIONS

1. Cost-Plus is defined as payroll or salary cost plus one hundred and fifty percent (150%) plus reimbursable expenses.

2. Payroll or salary cost shall be defined by the ASCE - Manuals and Reports on Engineering Practice - No. 45, 1972, as follows:

> *Salary cost is defined as the cost of salaries (including sick leave, vacation, and holiday pay applicable thereto) of engineers, technicians, draftsmen, stenographers, surveymen, clerks, etc., for time directly chargeable to the project plus unemployment, excise, and payroll taxes, and contributions for social security, employment compensation insurance, retirement benefits, and medical insurance benefits.*

3. Reimbursable expenses shall mean the actual expense of transportation and subsistence of principals and employees when traveling in connection with the project, toll telephone calls and telegrams, reproduction of reports, drawings and specifications, and similar project related items, plus 15% to provide for applicable general overhead. Reimbursable expenses with respect to automobile travel by company or personnel-owned vehicles shall be charged at the rate of $0.18 per mile.

ITEM H - GENERAL CONSIDERATIONS

1. *Ownership of Documents*

All documents, including original drawings, estimates, specifications, field notes and data, shall be the property of the Owner. The Owner shall have the right to reuse the same for extensions of this project of this project or for

new projects, without the written permission of the Consulting Engineers and without paying any further compensation to said Consulting Engineers. Any reuse without specific written verification or adaptation by the Consulting Engineers will be at the Owner's sole risk and without liability or legal exposure to the Consulting Engineers.

2. *Estimates*

The Consulting Engineers have no control over the cost of labor and materials, or over competitive bidding and market conditions, and the estimates of construction cost provided for herein are made on the basis of their experience and qualifications. The Consulting Engineers do not guarantee the accuracy of such estimates as compared to the contractor's bids or the project construction cost.

3. *Work by the Owner's Forces*

In the event the Owner elects to construct a portion or portions of the improvements planned by the Consulting Engineers with the Owner's own forces, the total construction cost to be used in determining the Consulting Engineer's compensation under Item F shall be provided under Item F, Paragraph 1, together with the Consulting Engineers' estimate for the portion(s) of the work done by the Owner's forces.

The Owner reserves the right to have qualified county personnel perform engineering services under Items C and D on this project without compensating the Consulting Engineers for these services where the Owner has given written notice to the Consulting Engineers prior to the Consulting Engineers rendering such services.

4. *Insurance*

The Consulting Engineers shall secure and maintain coverage as will protect them from claims under the Workmen's Compensation Act and from claims for bodily

injury, death, or property damage which may arise from the performance of their services under this Agreement.

5. *Successors and Assigns*

The Owner and the Consulting Engineers each binds himself and his partners, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the Owner nor the Consulting Engineers shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

7. *Termination of Contract*

This Agreement may be terminated at any time by either party hereto. Written notice of intent to terminate shall be given by either party hereto to the other party at least 30 days prior to the date of final termination. In the event of such termination, the Consulting Engineers shall be fully compensated under the provisions of this Agreement for all work performed and services rendered prior to the date of final termination.

8. *Contingent Fees*

The Consulting Engineers warrant that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consulting Engineers, to solicit or secure this Agreement, and that they have not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consulting Engineers, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

9. *Transportation Costs*

The Owner shall not reimburse the Consulting Engineers for the cost of transportation outside Pinellas County except where such travel is authorized by the Owner under Supplementary Services.

10. *Project Coordinator*

The Consulting Engineers shall provide, at no additional cost to the Owner, a project coordinator who shall coordinate all phases of the engineering services to be performed herein, including supplementary services.

ITEM K - EXECUTION

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed on behalf of its proper officers of the Board of County Commissioners, their seal hereunto affixed and attested by witnesses whose names are subscribed opposite each respective signature, and the Consulting Engineers have caused this instrument to be executed in their names by their duly authorized officers and under corporate seals affixed this 24th day of March, 1975.

Owner:
BOARD OF COUNTY
COMMISSIONERS
PINELLAS COUNTY,
FLORIDA

ATTEST: HAROLD MULLENDORE,
CLERK

_____ By_____
Title Chairman

By _____

Consulting Engineers:
BLACK, CROW AND
EIDSNESS, INC.

ATTEST

_____ By_____

Corporate Secretary Title Vice President

APPROVED AS TO FORM AND
CORRECTNESS

_____

Owner's Attorney

APPROVED AS TO
FORM AND CONTENT:

_____

Black, Crow and
Eidsness,
Inc. - Counsel

Exhibit 2 to Appendix Z

Excerpts of the First Amended Complaint for Negligence, Breach of Contract, Breach of Implied Warranty of Fitness for Particular Purpose, Breach of Implied Warranty of Merchantability, Strict Liability in Tort, Fraud, and Punitive Damages

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
Circuit Civil No. 83-13313-08

PINELLAS COUNTY,

Plaintiff

vs.

INTERPACE CORPORATION,
CLEVEPAK CORPORATION, AND
MADISON MANAGEMENT GROUP, INC.,
AS SUCCESSORS OF INTERPACE
CORPORATION; AND CH2M HILL
SOUTHEAST, INC.,

Defendants.
_____/

FIRST AMENDED COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, STRICT LIABILITY IN TORT, FRAUD, AND PUNITIVE DAMAGES

The Plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the Defendants, INTERPACE CORPORATION, a foreign corporation; CLEVEPAK CORPORATION, a foreign corporation, and MADISON MANAGEMENT GROUP, INC., a foreign corporation, as successors of INTERPACE CORPORATION; and CH2M HILL SOUTHEAST, INC., a Florida corporation, and avers:

COUNT I
NEGLIGENCE

1. At all times material to this First Amended Complaint, the Plaintiff, PINELLAS COUNTY, is a political subdivision of the State of Florida.

2. At all times material to this First Amended

Complaint, the Defendant, INTERPACE CORPORATION, is a foreign corporation organized and existing under the laws of the State of Delaware and is authorized to do business in the State of Florida. On or about July 2, 1981, GHA Lock Joint, Inc. purchased certain domestic assets of the Lock Joint Products Division of the Defendant, INTERPACE CORPORATION, and contractually agreed to assume certain liabilities incurred by the Defendant, INTERPACE CORPORATION. Plaintiff is a third-party beneficiary of the contract entered into between GHA Lock Joint, Inc. and the Defendant, INTERPACE CORPORATION, or its subsidiary. On or about May 3, 1985, the Defendant, INTERPACE CORPORATION, merged with or changed its name to Clevepak Corporation, and subsequently merged with or changed its name to Madison Management Group, Inc. on or about July 9, 1987. Consequently, Clevepak Corporation and/or Madison Management Group, Inc. are successors of the Defendant, INTERPACE CORPORATION, and are liable for any and all acts alleged herein to which the Defendant, INTERPACE CORPORATION, is liable.

3. In March of 1975, the Plaintiff. PINELLAS COUNTY, executed an agreement with the consultant engineer, Black, Crow and Eidsness, Inc., whose corporate name has been changed to CH2M HILL SOUTHEAST, INC., for the design of a transmission main and selection of a route from the point of termination of the Cypress Creek transmission main which is located at the Pasco-Pinellas County line to the North Booster Station located on U.S. Highway 19 north of S.R. 580. In February of 1977, the Plaintiff, PINELLAS COUNTY, executed a contract with the Defendant, INTERPACE CORPORATION, as the pipe manufacturing contractor, for the furnishing of approximately 63,400 linear feet of prestressed concrete pipe, 60 inches in diameter, and 8,160 linear feet of prestressed concrete pipe, 54 inches in diameter, together with other fittings and specials. Both Defendants knew before entering into their obligation in relation to said transmission lines, that both the 54-inch diameter and, in particular, the 60-inch diameter transmission line, described herein, would constitute the heart of the Pinellas County Water System, and would supply water to all retail customers of the Pinellas County Water System and five wholesale customers of the Pinellas County Water System who are Pasco County and four municipalities located within Pinellas County. Said transmission lines were to be utilized and are being utilized at

the present time to receive water from the County's Cypress Creek Wellfield and the County's Cross Bar Ranch Wellfield located in Pasco County.

4. Both Defendants knew or should have known that said pipelines were to be the most critical transmission line and an integral part in the entire Pinellas County Water System which, after construction, could not be taken out of service except under extremely unusual conditions, and for short periods of time during the rainy season or the winter months. So critical is the utilization of said transmission lines that without their existence, or should their use be disrupted for any unreasonable or substantial period of time, a water emergency or water crisis would have to be declared in Pinellas County which would result in water rationing.

5. As a result of the need for said transmission lines, the Plaintiff, PINELLAS COUNTY, contracted in Pinellas County with the following named Defendants for the following indicated services for the design, creation of specifications, and manufacture of said transmission lines:

(A) With Defendant, INTERPACE CORPORATION, the pipe manufacturing contractor, a contract for the manufacture of the 60-inch diameter and 54-inch diameter transmission pipe sections which were to be installed into the transmission pipelines, said contract being executed on the 25th day of February, 1977, wherein the Defendant, INTERPACE CORPORATION, was to supply through its Lock Joints Products Division, pipeline sections for construction of the pipelines. A copy of the material portions of the contract documents is attached to this Complaint together with the appropriate bid and bidding information accepted by the Defendant, INTERPACE CORPORATION, as Plaintiff's Exhibit "A".

(B) With Defendant, CH2M HILL SOUTHEAST, INC., which was known by the name of Black, Crow and Eidsness, Inc. at the time of the execution of a contract dated the 24th day of March, 1975, between the Plaintiff, PINELLAS COUNTY, and Black, Crow and Eidsness, Inc. for Black, Crow and Eidsness, Inc. to act as the County's consulting engineers, wherein Black, Crow and Eidsness, Inc., was to provide, among other duties, route selection survey; selection of the choice of materials to be specified for the component parts of the pipeline; the investigation of above-ground and below-ground chemical, physical, soil, groundwater,

and electrical conditions and their potential effects on the materials selected for the component parts of the pipeline; to provide the final design and construction plans and specifications for the project; provide consultation and advise as to the necessity of providing or obtaining other services such as laboratory testing and inspection of samples or materials and special consultations; and to provide construction supervision such as visiting the construction site on an average of four (4) times per month to protect the owner against defects and deficiencies in the work of the contractor, to check shop drawings and descriptive data as to the general conformity to the plans and specifications of the project, and to require special examination or testing of the work and recommend final acceptance of the work. A copy of said contract is attached to this Complaint as Plaintiff's Exhibit "B".

6. Thereafter, the Defendant, INTERPACE CORPORATION, through its Lock Joint Products Division, pursuant to the plans and specifications designed and written by the Defendant, CH2M HILL SOUTHEAST, INC., as more particularly described in Plaintiff's Exhibit "A", commenced construction of the pipe sections, fittings, and other specials which, when fitted together, would constitute the 60-inch diameter and 54-inch diameter pipelines.

7. Throughout the period from approximately the 25th day of February, 1977, to the early part of 1978, the Defendant, INTERPACE CORPORATION, designed and manufactured sections of the 60-inch diameter and 54-inch diameter pipes, pipe fittings, and specials, which were delivered to the respective construction areas and installed in the ground by Bumby & Stimpson, Inc., the installation contractor. The said 60-inch diameter pipeline, when completed, consisted of approximately 12 miles of pipeline or 63,400 linear feet of pipe. The 54-inch diameter pipeline consists of approximately 1.5 miles of pipeline or 8,160 linear feet of pipe.

8. The additional importance of the 54-inch diameter pipeline is that along with a parallel 42-inch diameter main, it connects, at its northern end, to the West Coast Regional Water Supply Authority (WCRWSA) regional 66-inch diameter transmission main near the Pasco-Pinellas County line, and transports all potable water made available to Pinellas County from the Cross Bar Ranch and Cypress Creek Wellfields operated by WCRWSA in neighboring Pasco County to the north. At its northern end, the

60-inch diameter pipeline connects to the southern ends of the parallel 42-inch diameter and 54-inch diameter pipelines, the Eldridge-Wilde Wellfield transmission main, and distribution mains adjacent to, and near, the S.K. Keller Pump Station, and transports the available water south into the densely populated areas of Pinellas County. The 60-inch and 54-inch diameter pipelines thus form the major transmission conduit and lifeline for system users of potable water coming from the three major wellfields to the north. The 60-inch and 54-inch diameter pipelines are an integral part of the entire Pinellas County Water System.

9. On the 2nd day of October, 1978, the 60-inch diameter pipeline was completed and placed into service and on the 2nd day of October, 1978, the 54-inch diameter pipeline was completed and placed into service.

10. Thereafter, the Plaintiff, PINELLAS COUNTY, utilized the 60-inch diameter pipeline and the 54-inch diameter pipeline for the supply of potable water to its retail and wholesale customers of the Pinellas County Water System. On the 13th day of November, 1979, in the area of a community known as East Lake Woodlands, a section of the 60-inch diameter pipeline exploded and ruptured, causing the opening of a gigantic hole in the area of the pipeline, rendering a section of the 60-inch diameter pipeline totally unusable. As a result of the pipeline failure, the Plaintiff, PINELLAS COUNTY, embarked upon an extensive investigation to determine the cause of the pipeline failure. Thereafter, commencing on the 19th day of November, 1979, the Plaintiff, PINELLAS COUNTY, through its consulting engineers, Jones, Edmunds & Associates, Inc., conducted an extensive investigation into the design and manufacture of both the 60-inch diameter and 54-inch diameter transmission lines. A pressure test to the design working pressure of 150 pounds per square inch (psi) took place in the 60-inch diameter transmission line between Station 82+88 and Station 243+00 on the 11th day of December, 1980, resulting in a rupture of the pipeline 90 seconds after the design working pressure was attained. An examination of the resulting rupture revealed evidence of severe corrosion pitting on the wire at the rupture location and the discovery of severely corroded broken wires beneath a delamination in the outer coating. Subsequently, a detailed inspection of pipe condition, pipe design, and pipe materials was performed on pipes removed from throughout the 60-inch diameter

and 54-inch diameter transmission lines. This inspection resulted in the additional finding of sections of pipeline which were faulty in design, failed to meet specifications for the construction of the pipeline, and were the result of faulty manufacturing techniques, all of which have resulted in the determination by the Plaintiff, PINELLAS COUNTY, that both the 60-inch diameter and 54-inch diameter transmission lines are undependable and riddled with defective pipe, which will result in periodic and frequent failures of numerous and various sections of pipeline in the future to the point that said pipeline needs to be totally replaced at a cost in excess of Sixteen Million Dollars. The rupture of the 60-inch diameter pipeline on November 13, 1979 and the second rupture of the 60-inch diameter pipeline on December 11, 1980 both caused extensive other property damage to the Plaintiff, PINELLAS COUNTY, and to private landowners, in addition to causing extensive damage to the pipeline itself, as follows:

(A) Internal labor by the Plaintiff, PINELLAS COUNTY; equipment and material costs; the administrative staff required to respond to both ruptures, including personnel needed to respond initially to the rupture sites and travel to and from the scenes; professional engineering services required to ascertain needed repairs and to specify repair materials; the time of the Plaintiff's, PINELLAS COUNTY'S, Water System and purchasing personnel to order materials and to engage a contractor, to inspect the repair work, to perform chlorination, and to perform laboratory work; and the demands on the Plaintiff's, PINELLAS COUNTY'S, Water System resources to advise media, consumers, and other government agencies, and to negotiate with homeowners and landowners concerning repairs required to damaged private property proximately caused by the rupture or ruptures;

(B) Direct and indirect contract costs for labor, equipment, and materials, including the costs to acquire fill dirt to replace dirt lost through erosion; repair of damaged private landscaping; restoration of the rupture sites; repair of water damage to a nearby private residence; excavation and removal of failed pipe sections; transportation, offloading, and installation of replacement pipe; investigation of possible damage to adjacent pipes; and removal and disposal of damaged pipe;

(C) The acquisition of additional easements and rights-of-way adjacent to the pipeline to build a safety zone to pro-

tect private structures, high-use areas including roads and high-value areas including private buildings, and homes from future calamitous ruptures that will occur, within a reasonable degree of engineering probability;

(D) The loss of large amounts of water from the initial rupture and from necessary flushing, cleaning, and sanitation operations;

(E) The loss of revenues due to reduced water pressures after the 60-inch diameter pipeline ruptures and during repairs, and also intangible economic loss of revenues and property loss to the Plaintiff, PINELLAS COUNTY; and

(F) Damage to the entire water system of the Plaintiff, PINELLAS COUNTY, in that the losses and the risks incurred as a direct result of the defective transmission lines are not the types of losses and risks normally allocated to the purchaser of this type of product. The 54-inch and 60-inch diameter transmission lines are an integral part of the entire Pinellas County Water System, providing a major or sole source of water to certain areas for fire protection, sanitary services, consumption uses, hygiene uses, and other services vital to the populous of Pinellas County. The likelihood of future major personal injury and property damage is greatly increased by the Plaintiff, PINELLAS COUNTY, not receiving transmission lines built to high standards of quality for a long service life as normally anticipated in the industry, thus jeopardizing the health, safety, and welfare of the customers and residents of Pinellas County.

11. The two pipe ruptures to date have caused other property damage, as enumerated in paragraph 10, supra, in addition to consequential damages, and damages to the pipeline itself and the entire Pinellas County Water System, as the pipeline is an integral part of the entire system and is interconnected to and is interdependent with the entire system. The Defendant, INTERPACE CORPORATION, agreed that its product would meet the Plaintiff's, PINELLAS COUNTY'S, reasonable economic expectations, and although the Plaintiff, PINELLAS COUNTY, relied on the Defendant's, INTERPACE CORPORATION'S, skill and judgment to select and to furnish a suitable product consisting of suitable materials, the Defendant, INTERPACE CORPORATION, did not exercise reasonable care in the design and manufacture of the pipe components, resulting not only in damage to the product itself

but also other damage to property. The failure by the Defendant, INTERPACE CORPORATION, to exercise reasonable care in the design and manufacture of the pipe components resulted in the creation of a continuing and worsening condition that is unreasonably dangerous to both persons and property and that will, within a reasonable degree of engineering probability, cause future damage to the pipeline and therefore to the entire Pinellas County Water System, in addition to future other property damage to the Plaintiff, PINELLAS COUNTY, and potential future damage to the property of private citizens and personal injury to private citizens and to county personnel, as the pipeline is located adjacent to homes, buildings, and roads in congested Pinellas County, for which the Plaintiff, PINELLAS COUNTY, will be responsible.

Furthermore, the Defendant, INTERPACE CORPORATION, breached the standards of the pipe manufacturing industry and the standards of general custom and usage in the pipe manufacturing industry by its negligent design, manufacture, and marketing of a defective product which is unreasonably dangerous and riddled with latent defects, thereby creating an unreasonable, dangerous condition.

The unreasonably dangerous condition created by the Defendant, INTERPACE CORPORATION, was the proximate cause of two sudden, dangerous, and calamitous pipe ruptures, and the existing unreasonable, dangerous condition will be the proximate cause, within a reasonable degree of engineering probability, of future damage to the pipeline itself, the entire water system, and to other property.

The deteriorating condition of the pipeline components will, within a reasonable degree of engineering probability, result in more future, sudden, dangerous, and calamitous pipe ruptures, which will proximately cause future damages to the pipeline, the water system, and to other property.

The risk of damages to the pipeline and to other property as a result of the knowing creation of an unreasonably dangerous condition by the Defendant, INTERPACE CORPORATION, was reasonably foreseeable to the Defendant, INTERPACE CORPORATION, was hidden to the Plaintiff, PINELLAS COUNTY, and cannot be considered to be a part of any ordinary contractual risk.

12. The Defendant, INTERPACE CORPORATION, carelessly and negligently designed, manufactured, and produced the

60-inch diameter and the 54-inch diameter pipes, pipe fittings, and specials, and negligently and carelessly fell below the standards commensurate in the industry for the design and manufacture of pipes, pipe fittings, and specials in the following respects:

(A) The material parameters used in the design of the pipes were different from and superior to the characteristics of the materials used to fabricate the pipe or, in other words, the materials utilized in the manufacture of the pipe did not meet the design assumptions in that:

(1) The modules of elasticity of the concrete at the time the pipes were prestressed was less than that assumed to compute the initial modular ratio submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the design;

(2) The resultant modulus of elasticity of the concrete assumed to compute the resultant modular ratio submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the design to calculate the losses in concrete prestress, was higher than the resultant modulus of elasticity of the concrete used in the fabrication of the pipe;

(3) The combined modulus of elasticity of the steel cylinder and prestressed wires assumed to compute the initial and resultant modular ratios submitted by the contractor (INTERPACE CORPORATION) to the engineer (Black, Crow and Eidsness, Inc.), approved by the engineer, and used in the fabrication of the pipe was higher than the combined modulus assumed in the design;

(4) The creep of the concrete used in the fabrication of the pipe exceeded the concrete creep assumed in the design of the pipe;

(5) The three-edge bearing strength of the pipe did not consistently meet the minimum value assumed in the design calculations;

(6) The creep factor assumed in design was insufficient to compensate properly for actual material properties and/or for the variations in factors affecting the actual behavior of the pipe;

(7) The wire embedment and/or relax-

ation losses assumed in design were insufficient to compensate properly for actual material properties and/or for the variations in factors affecting the actual behavior of the pipe;

(8) The steel cylinder thickness assumed in the design calculations was less than the value specified and less than the cylinder thickness actually provided, resulting in less prestressing wire being applied to the concrete than necessary to resist the internal pressure; and

(9) The material components of the pipe were chosen, assembled and manufactured so as to result in a final product that failed to meet the pressure at zero core concrete stress, P_0, to achieve the design required by project specifications, and represented as being provided by the Defendant, INTERPACE CORPORATION.

As a direct and proximate result of the use of the incorrect parameters in the design, the Defendant, INTERPACE CORPORATION, provided to the Plaintiff, PINELLAS COUNTY, pipe which was lower in strength; which failed to meet the specified design working pressure of 150 psi and specified design plus surge (water hammer) pressure of 210 psi; and which had less safety factor than represented by the manufacturer, INTERPACE CORPORATION, and required by the specifications for the manufacture of the pipe as specified in Plaintiff's Exhibit "A".

(B) The concrete materials used in the fabrication of the pipe did not meet the specification requirements as contained in Plaintiff's Exhibit "A" in that:

(1) The fine aggregate incorporated in the concrete core and the mortar coating over the prestressed wires was more finely graded than permitted by the specification limits (AWWA C-301-72);

(2) The coarse aggregate incorporated in the concrete contained deleterious substances in the form of minus 200 (-200) mesh sieve material, soft particles, clay lumps, and the combination thereof in excess of the amounts permitted by the specifications limits (AWWA C-301-72);

(3) Chemical admixtures were used in the concrete without the permission or knowledge of the purchaser, Plaintiff, PINELLAS COUNTY, as required by the specifications. The type of admixture and quantity used was changed without notifying the purchaser, Plaintiff, PINELLAS COUNTY;

(4) The mortar coating did not consistently meet the specification requirement (AWWA C-301-72) that the mortar coating consist of one part cement to three parts fine aggregate;

(5) Mortar was used as the coating material for the subject pipe instead of the specified required concrete coating;

(6) The Defendant, INTERPACE CORPORATION, failed to submit to the Defendant, CH2M HILL SOUTHEAST, INC., the consulting engineers, its test results on materials and the affidavit and certification of compliance with all applicable provisions of the standard as required in AWWA C-301-72, and certifications as required in their contract with the Plaintiff, PINELLAS COUNTY; and

(7) The Defendant, INTERPACE CORPORATION, failed to utilize a mortar mix of sufficient richness to permit a high moisture content for coating placement, and to thereby provide a coating of sufficient quality to protect the prestress wire adequately.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, through the use of nonconforming materials, the concrete used in the fabrication of the pipe did not possess the qualities deemed essential and required by the specifications to ensure adequate performance and durability of the pipe. The use of the admixtures to attempt to compensate for the deficiencies of the materials and procedures used was hidden from the purchaser, Plaintiff, PINELLAS COUNTY, contrary to the requirements of the contract between the Plaintiff, PINELLAS COUNTY, and the Defendant, INTERPACE CORPORATION.

(C) The prestress wire used in the fabrication of the pipe did not meet the specification requirements as contained in Plaintiff's Exhibit "A" or the recognized standards commensurate in the wire drawing industry in that:

(1) The prestress wire consistently failed to meet the specified minimum permissible diameter of 0.1600 inch;

(2) Prestress wire with split seams and serious seams was used in violation of specification requirements (ASTM A-227). Also, wire which was known to be prone to splitting and wire with longitudinal splits was used;

(3) The wire was overdrawn and grossly defective in that it was susceptible to splitting, environmentally assisted crack growth (stress corrosion and hydrogen embrittlement), and pitting, resulting in failure in the environment in which it was known or should have been known that it was going to be exposed and placed into service;

(4) The temperature of the lead quench portion of the patenting furnace was improperly lowered below the minimum acceptable temperature for production of satisfactory patenting rod to increase rod strength and increase the strength of the wire drawn therefrom;

(5) The temperature of the wire was not properly controlled during the wire drawing process and the wire was not cold drawn as required by the project specifications and the applicable national standards, thereby allowing the wire's temperature to rise beyond the maximum allowable temperature for production of satisfactory quality wire, and thereby creating wire that lacked sufficient ductility for its intended purpose;

(6) The rod used to make the prestress wire was of the incorrect dimension and inappropriate quality;

(7) The cleaning and coating of the patented rod, prior to wire drawing, was improper and inadequate, resulting in increased wire drawing temperature, and consequent hydrogen charging and embrittlement of the wire;

(8) The Defendant, INTERPACE CORPORATION, failed to discard rod which had been subjected to stoppage and improper speeds in the lead patenting line, resulting in the use of improperly and defectively patented rod in the manufacture of the wire;

(9) "Class IV", 8-gauge prestressing wire, used throughout the pipe, was wire with a strength and quality not recognized or recommended by any national standards, organization, or published specification. This prestress wire was manufactured and used solely to obtain a cost advantage over competitors;

(10) The development of "Class IV" wire was not done by, or under the supervision of, personnel competent in the field of wire manufacturing or wire metallurgy;

(11) The wire was inadequately tested during its development and manufacture by the Defendant, INTERPACE CORPORATION, by their failure to apply all of the

appropriate tests, including the torsion test, thoroughly and completely; by their failure to explore the properties and performance of the wire fully; by their failure to properly account for all of the stresses in the installed wire which result in excessive relaxation, relative to the design assumptions, resulting in inadequate prestressing of the wire on the pipe; and by their failure to interpret the nature of the results correctly and prudently of the few inadequate tests that were performed;

(12) The equipment used in the wire drawing process was not properly maintained, calibrated, or prepared for use;

(13) The "Class IV" wire was improperly manufactured and drawn in that the Defendant, INTERPACE CORPORATION, used improper wire drawing equipment which had either a 5 or, at best, a 6 drawing die capability, whereas it is metallurgically impossible to make proper "Class IV", 8-gauge wire, especially with 5 or 6 die drawing practice;

(14) During manufacture of the "Class IV" wire and prior to its being sent to the manufacturing plant to be wrapped on the pipe sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE, CORPORATION, failed to stress relieve the "Class IV" wire which it manufactured, in order to make it less susceptible to corrosion. By the Defendant's, INTERPACE CORPORATION'S, failure to stress relieve the "Class IV" wire prior to placing it on the pipe sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE CORPORATION, made the wire much more susceptible to corrosion and thus ultimate failure by failing to utilize the stress relieving process;

(15) The Defendant, INTERPACE CORPORATION, failed to produce wire of proper ductility in that the wire developed serious seams both during and following manufacture. Therefore, non-ductile wire was placed upon the pipe sold to the Plaintiff, PINELLAS COUNTY. The Defendant, INTERPACE CORPORATION, further failed to perform any torsion test in the development and manufacturing stages of production of the wire, which if performed would have shown that the wire did not pass the torsion test and therefore was not ductile and should not have been used in the manufacture of prestressed concrete pipe sold to the Plaintiff, PINELLAS COUNTY;

(16) During the manufacture of the pipe

sold to the Plaintiff, PINELLAS COUNTY, the Defendant, INTERPACE CORPORATION, wrapped the prestress wire at stress levels above the elastic limit of the wire. Due to the extremely high and deleterious wire temperatures permitted during wire manufacturing, this caused the wire to go into relaxation more than calculated in design, and thereby lowered the P_O of the pipe, thus producing pipe with lower working pressure and surge pressure than calculated in design;

(17) The Defendant, INTERPACE CORPORATION, manufactured and produced "Class IV" wire which was placed on pipe sold to the Plaintiff, PINELLAS COUNTY, and which had the characteristic of tending to produce "star fractures" with longitudinal splitting in the fracture surface. This type of fracture is recognized in the wire-making industry as an indication of defective and brittle wire. Therefore, the Defendant, INTERPACE CORPORATION, failed to place properly manufactured wire on the pipe sold to the Plaintiff, PINELLAS COUNTY, and, instead, furnished wire containing longitudinal seams and planes of weakness which, when subjected to environmental conditions not sufficiently severe to cause pitting, nonetheless produced stress corrosion cracking and hydrogen embrittlement in the defective wire furnished by the Defendant, INTERPACE CORPORATION;

(18) The fact that the Defendant, INTERPACE CORPORATION, produced defective "Class IV" wire in each and every pipe sold to the Plaintiff, PINELLAS COUNTY, and that such defects require a total replacement of the pipeline sold to the Plaintiff, PINELLAS COUNTY, by the Defendant, INTERPACE CORPORATION, is demonstrated by the fact that there have been numerous pipe failures in pipe containing defective "Class IV" wire and other manufacturing defects as alleged in this Amended Complaint. These pipe failures throughout the country on other pipe sold to other customers by the Defendant, INTERPACE CORPORATION, demonstrate that "Class IV" wire constitutes an inherent latent defect and prove, with a reasonable degree of engineering probability, that the pipeline sold to the Plaintiff, PINELLAS COUNTY, will prematurely fail;

(19) The Defendant, INTERPACE CORPORATION, failed to provide wire test specimens and other steel test specimens to the Defendant, CH2M HILL SOUTHEAST, INC., as required by the contract specifications contained in Plaintiff's

Exhibit "A" and by Section 1.9 of AWWA C-301-72, the applicable national standard;

(20) The Defendant, INTERPACE CORPORATION, failed in general to meet the requirements of Section 1.8 of AWWA C-301-72, requiring the manufacturer to perform all work in a thorough, workmanlike manner, using mechanics skilled in their various trades as evidenced, among many examples, by corroded wire, over-heated wire, wire that failed the torsion test, wire that is extremely sensitive to hydrogen embrittlement and stress corrosion cracking, split wire, brittle wire, wire with seams, rusty wire, and non-ductile wire; and

(21) Before commencing commercial production of prestressed concrete embedded cylinder pipe incorporating "Class IV" wire, the Defendant, INTERPACE CORPORATION, failed to investigate sufficiently and conduct adequate preliminary testing on "Class IV" wire, and pipes incorporating "Class IV" wire. Furthermore, the Defendant, INTERPACE CORPORATION, withheld information developed by the Defendant, INTERPACE CORPORATION, which indicated inferior performance of pipe manufactured using "Class IV" wire in lieu of acceptable wire manufactured pursuant to published material standards.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, the subject pipeline's prestress wire is so defective, and its safety factor against failure is so continuously being reduced, that the pipeline is unreliable, will continue to fail prematurely in service, and constitutes a hazard to the community and surrounding areas and to the health, safety, and welfare of community residents where it is located.

(D) The procedures used to manufacture the pipe were not in accordance with the requirements of the specifications contained in Plaintiff's Exhibit "A" in that:

(1) Pipe cores were not cured as required by the specifications (AWWA C-301-72). Cores were "tipped" from their bases and removed to a storage yard prior to 32 hours age. Water spraying was haphazard and only portions of the cores were kept moist for the required curing period;

(2) Water curing of the mortar coating was not maintained for four (4) days as required by the specifications (AWWA C-301-72). Pipes were prematurely removed from

curing and stored in open yard subject to drying and shrinkage;

(3) The minimum clear distanc between prestress wires was not maintained at all times, resulting in adjacent wires touching, thereby creating voids which could not be filled with protective slurry or mortar;

(4) Defective concrete and mortar were not removed to the extent necessary to ensure the quality of the pipe;

(5) Repairs were made to the pipe using materials having different constituents, consistencies, and qualities from those required by the specifications contained in Plaintiff's Exhibit "A";

(6) Work was not performed in a workmanlike manner by properly trained employees and mechanics skilled in their trade;

(7) The precast concrete cores consistently failed to meet the specified minimum core thickness;

(8) The coating consistently failed to meet the specified 7/8-inch minimum coating thickness;

(9) Pipe was improperly handled during manufacture by allowing unwrapped or wrapped pipe to be contaminated with mud, soil, or clay, resulting in inclusions of mud, soil, or clay between the wires and beneath the coating;

(10) Wire splices found on individual pipes were of such frequency that some of the pipes had to have been produced with four or more separate sections of wire, providing clear evidence as to the poor quality of the wire at the time of wire wrapping;

(11) Pipe coating was not properly deposited and consolidated to produce a dense, durable wire encasement as required by the specifications (AWWA C-301-72). Failure to consolidate the coating properly and sufficiently created a non-uniform coating with a zone of high porosity and low cement paste content at the prestress wire level and beneath wire haunches, thereby failing to protect the wire adequately from corrosion;

(12) Inadequate welding practices were used in welding of the steel cylinders, resulting in the probability of cylinder leakage, and corrosion and embrittlement of the prestress wire; and

(13) Total or partial lack of quality control existed at the plant, so that important phases of the pipe's manufacture were uncontrolled and inadequate, resulting in the manufacture of substandard pipe which will ultimately and prematurely fail in service.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, and because of the deficiencies hereinabove alleged, the concrete pipe produced were of variable and uncertain quality resulting in imperfections and weak areas in unknown locations, subject to environmentally induced wire corrosion and embrittlement, excessive stresses, reduced safety factors, reduced durability, and premature pipe failure.

(E) The equipment used to fabricate the pipe was not properly maintained, calibrated, or prepared for use. In addition, the Defendant, INTERPACE CORPORATION, was careless and negligent in that:

(1) Welding rods used to fabricate the steel cylinders were not maintained in adequately heated dry storage as recommended by the rod manufacturer to ensure satisfactory welds;

(2) Molds were not thoroughly cleaned before each use as required by the specifications (AWWA C-301-72) resulting in imperfect concrete surfaces with numerous voids;

(3) Molds were not properly assembled and sealed which produced cores that have irregularities and offsets in the surface at the mold gates, variable wall thickness, thin on one side, and eccentrically positioned cylinders within the core, resulting in stresses within the pipe greater than those for which it was designed; and

(4) Application of the cement slurry prior to coating the prestress wire was erratic and insufficient, resulting in areas throughout the pipeline which are highly susceptible to corrosion of the prestress wire. Specifically, the slurry was of improper consistency. Also, the slurry application was erratic or non-existent, and was insufficient beneath the wire haunches, in the area where the wire contacts the precast concrete core, and on the remaining wire surface areas. This deficient application of slurry has subsequently failed to provide a protective environment for the wire, resulting in rapid corrosion, including embrittlement, of

the prestressed wire and premature ultimate failure.

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, and as a consequence of the above-described deficiencies, the pipeline was supplied with less strength, capacity, and durability than required by the specifications as contained in Plaintiff's Exhibit "A".

(F) The quality control exercised during production of the pipe was inadequate to ensure pipes were produced in accordance with the specification requirements. As a result of these actions, the Defendant, INTERPACE CORPORATION, was careless and negligent in the following additional respects:

(1) The personnel conducting the quality control tests required by the specifications were not qualified or adequately trained;

(2) The quality control tests performed were not made in accordance with the ASTM methods cited in the specifications as required by Plaintiff's Exhibit "A";

(3) Inadequate personnel were employed to assure product conformance with the specifications in all respects;

(4) The quality control program used was inadequate to ensure that pipes conforming to the specifications or that pipes undamaged during the manufacturing process were supplied;

(5) The pipe was manufactured and cured using materials and practices which resulted in carbonation of precast core concrete paste at and beneath the surface upon which the prestress wire was subsequently wrapped, thereby lowering the pH and eliminating the protection of the wire provided by high alkalinity, resulting in corrosion of the prestress wire and ultimate failure;

(6) The pipe was manufactured with coating material containing debris, stones, chunks of hardened concrete, and pockets and lenses of sand unmixed with cement, resulting in inadequate protection of the wire from corrosion;

(7) Prestress wire and coating were applied to precast concrete surfaces contaminated with dirt, oil, and mud, and which concrete surfaces contained numerous unfilled voids, resulting in poor bond of the coating to the core and

inadequate protection of the wire from corrosion;

(8) The pipe was manufactured with mortar coating of varying and uncontrolled consistency and moisture content, and was mishandled during manufacturing, resulting in non-uniform coating with zones of high porosity, delaminated coating, cracked coating, coating containing holes and voids, coating prone to excessive shrinkage and shrinkage cracking, and coating with inconsistent and poor bonding properties;

(9) The pipe was manufactured with steel cylinders which were not uniformly round or concentrically positioned, as required by the project specifications, resulting in variable and unknown core concrete stress distributions and the inability to install pipe tapping assemblies dependably;

(10) The pipe was manufactured with prestress wire which was improperly stored, poorly protected from the weather, and, as a result, corroded at the time of pipe manufacture; and

(11) The Defendant, INTERPACE CORPORATION, failed to inspect the pipe properly prior to shipping to guard against coating drumminess and separation of the coating from the joint rings or the core;

As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove described, the above-described deficiencies resulted in the delivery of a pipeline which did not conform to the specification requirements and had imperfections making it susceptible to deterioration and corrosion of the prestressed wires leading ultimately to failure.

(G) The field repairs conducted by the Defendant, INTERPACE CORPORATION, of damaged pipe were made under the supervision of the manufacturer's representative and were not adequate to prevent corrosion of the prestress wire.

(H) Accelerated corrosion tests were done on "Class IV", 8-gauge prestress wire, the results of which indicated poor performance of such wire relative to the other classes of wire in the categories of stress corrosion cracking and pitting corrosion. These significant results and information were withheld by the Defendant, INTERPACE CORPORATION, from consulting engineers and customers.

(I) Tests on the coating of experimental pipe

manufactured with "Class IV" prestress wire were done, the results of which indicated poor coating cracking performance. These significant test results and information were withheld by the Defendant, INTERPACE CORPORATION, from consulting engineers and customers.

(J) The Defendant, INTERPACE CORPORATION, failed to protect properly the prestress wire incorporated into the subject pipe in that:

(1) Said wire was placed upon carbonated precast concrete cores. Carbonated concrete cores create an environment under the prestress wire which fails to provide uniform and sufficient alkalinity to protect the wire, thus violating one of the fundamental assumptions of prestressed concrete pipe development, and thereby resulting in corrosion of the corrosion-susceptible "Class IV", 8-gauge prestress wire and ultimate failure;

(2) The Defendant, INTERPACE CORPORATION, placed rusty, corroded, or corrosion-pitted wire on the pipe, thereby creating a concealed condition in manufacture, wherein the wire corrosion process was already initiated at the time of pipe manufacture, thereby making the entire pipeline much more susceptible to failure;

(3) The Defendant, INTERPACE CORPORATION, failed to require a slurry coating on the wire just before wrapping the pipe to eliminate wire corrosion at the interface of the wire and the precast concrete core; and

(4) Furthermore, application of the cement slurry following prestressing was erratic, insufficient or nonexistent, and of improper consistency beneath the wire haunches in the area where the wire contacts the precast concrete core, and on the remaining wire surfaces.

As a consequence, the prestress wire has undergone continued rapid corrosion, including embrittlement, resulting in premature, ultimate failure.

(K) The Defendant, INTERPACE CORPORATION, had written intercompany procedures, known as Manufacturing Procedures (MP's), Testing Procedures (TP's), Material Specifications (MSP's), and Operations Circulars (OC's), which set forth the company's own standards to be met and followed during the manufacturing and testing of the pipe. In addition, a manual of quality control procedures was published for use

within the company setting forth what were known to be, based upon experience and prudent engineering, minimum standards to be followed to ensure a quality product. These intercompany procedures and manuals reflect, in part, some evidence of the standard of care to which a reasonable manufacturer of prestressed concrete pipe should be held. These manuals were not consistently followed nor adhered to, resulting in an inferior, defective pipe of a quality and durability substantially less than could have been the case had these manuals been followed, and substantially less than the Plaintiff, PINELLAS COUNTY, had bargained for in retaining a nationally known prestressed concrete pipe manufacturer.

(L) The Defendant, INTERPACE CORPORATION, failed in general to make pipe according to the specifications in Plaintiff's Exhibit "A", including AWWA C-301-72.

13. Properly manufactured pipe which was to be delivered by the Defendant, INTERPACE CORPORATION, to the Plaintiff, PINELLAS COUNTY, was advertised or represented by the Defendant, INTERPACE CORPORATION, to last for 100 years and, in fact, if properly designed and manufactured, should or would last indefinitely. The pipe, and as a result the pipelines, namely the 60-inch diameter and 54-inch diameter transmission lines, designed and manufactured by the Defendant, INTERPACE CORPORATION, are inherently defective with defects as hereinabove alleged which were latent and undiscoverable by the Plaintiff, PINELLAS COUNTY, unless the pipe itself was inspected through destruction of the pipe thus rendering it useless for service in the pipeline. As a result of the construction, design, and manufacture of the above-described latent defects, the Plaintiff, PINELLAS COUNTY, was unaware of the existence of said latent defects until, through its lengthy and scientific investigation, the determination and existence of said latent defects in its transmission lines became known to the Plaintiff, PINELLAS COUNTY the 3rd day of September, 1980, when at said time, the Plaintiff, PINELLAS COUNTY, placed the Defendant, INTERPACE CORPORATION, on notice of its responsibilities for furnishing the Plaintiff defective pipelines. Said latent defects were not discoverable through reasonable diligence of the Plaintiff, PINELLAS COUNTY, until said date because said latent defects could only be discoverable by destruction of the pipe itself. The fact that other INTERPACE CORPORATION pipeline failures occurred throughout the country

involving INTERPACE CORPORATION pipes with "Class IV", 8-gauge wire put INTERPACE CORPORATION on notice of a severe problem with "Class IV", 8-gauge wire, and other problems with pipe material components and design defects, before the manufacture of the Plaintiff's, PINELLAS COUNTY'S, pipeline. Nevertheless, the Defendant, INTERPACE CORPORATION, manufactured the Plaintiff's, PINELLAS COUNTY'S, pipeline using defective material that created dangerous latent defects in the pipeline.

The fact that other failures of the Defendant's, INTERPACE CORPORATION'S, pipelines have continued, and are continuing, throughout the country indicates that the Defendant, INTERPACE CORPORATION, created a dangerous latent condition in the manufacture of the Plaintiff's, PINELLAS COUNTY'S, pipeline.

As hereinabove alleged, the pipeline is an indispensable main artery and an integral part of the entire Pinellas County Water System and cannot be taken out of service for any substantial length of time. Consequently, the Plaintiff, PINELLAS COUNTY, can only periodically examine sections of the pipeline during periods of low demand when service may be temporarily interrupted through said pipelines.

14. As a direct and proximate result of the carelessness and negligence of the Defendant, INTERPACE CORPORATION, as hereinabove alleged, the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars in that the Plaintiff, PINELLAS COUNTY, has had to repair damage to the pipeline itself and other resulting property damage from the two calamitous ruptures to date; will be required to repair all potential future damages to the pipeline and to other property resulting from the unreasonably dangerous condition created by the Defendant, INTERPACE CORPORATION; will be required to replace the entire 60-inch diameter and the 54-inch diameter transmission lines; will be required in the replacement of said lines to design, acquire, and provide to its water system all materials needed for the construction of said pipelines, which includes but is not limited to surveying and engineering services; testing; supervision, inspection of manufacturing, construction, and inspection of construction; acquiring materials, including new pipe, fittings, specials, valves, and appurtenances; the acquisition of new easements and rights-of ways; the acquisition of temporary construction ease-

ments; the removal, disposal, and backfilling of the existing defective pipeline; road and utility repair; reimbursement of costs to other utilities; work tasks performed by Pinellas County personnel and equipment; administration; and all associated labor, materials, equipment, and costs. In addition thereto, the Plaintiff, PINELLAS COUNTY, has been damaged in that it has been required to incur expenses in costs of inspection and testing of its pipeline to determine the existence of the defects and has been required to hire the services of consulting engineers for said purposes together with other experts, all of which damages exceed the sum of Sixteen Million Dollars.

...

COUNT IX
NEGLIGENCE AGAINST CH2M HILL SOUTHEAST, INC.

Plaintiff, PINELLAS COUNTY, by its undersigned attorney, sues the Defendant, CH2M HILL SOUTHEAST, INC., and avers:

63. Plaintiff, PINELLAS COUNTY, realleges and reavers its allegations contained in Paragraphs 1 through 14, Count I, above.

64. At all times material to this Complaint, Defendant, CH2M HILL SOUTHEAST, INC., is a Florida corporation formerly known as Black, Crow and Eidsness, Inc., who changed its corporate name to CH2M HILL SOUTHEAST, INC. and who is an engineering company organized and existing under the laws of the State of Florida, and is engaged in the engineering profession.

65. The Defendant, CH2M HILL SOUTHEAST, INC., in consideration of the payment of $292,211.16, which was 4.5 percent (%) of the total estimated construction costs of the project, provided final design plans and specifications pursuant to and under the terms of the contract between the Plaintiff, PINELLAS COUNTY, and Defendant, CH2M HILL SOUTHEAST, INC., Plaintiff's Exhibit "B". In addition, the Defendant provided construction supervision for an additional compensation of $72,728.11 which represents 1.12 percent (%) of the estimated construction costs.

66. The Defendant, CH2M HILL SOUTHEAST, INC., carelessly and negligently performed its duties owed to the Plaintiff, PINELLAS COUNTY, under their contract, Plaintiff's

Exhibit "B", in the following manner:

(A) Failed to direct properly, to perform, or to have performed soil survey investigations including, but not limited to, soil resistance to the flow of electric current, total soil acidity, soil drainage (groundwater fluctuation), soil texture, soil microbial activity, and soil chemistry; and failed to direct properly, to perform, or to have performed a corrosion testing program to determine the effects of the aforementioned local soil corrosion conditions on the rate of corrosion of prestressed steel wire embedded in mortar. As a direct result of such failure, the pipeline has been exposed to detrimental soil and groundwater conditions resulting in, but not limited to, a deterioration of and damage to the pipe mortar coating and the prestressed wire;

(B) Failed to direct properly, to perform, or to have performed investigations of the pipeline route for stray electrical currents, low soil resistitivities, and aggressive soil and groundwater conditions; failed to design the pipeline to prevent damage by electrolytic currents and stray electrical currents; and failed to consider in the design of the pipeline the effect of overhead voltage lines or any other sources of stray electrical currents on the structural integrity of the prestressed wires and, consequently, the entire pipeline. As a result, electrolytic currents and stray electrical currents have produced damages in, but not limited to, pipeline prestressed wires;

(C) Failed to prepare and review specifications properly for pipe manufacture by approving pipe manufactured with "Class IV" wire when, in fact, there were no recognized specifications which existed providing for such wire; by allowing specifications that did not require the wire to be ductile; by approving pipe designed with inadequate safety factors; by failing to review design calculations for the individual sections of pipe; by allowing the Defendant, INTERPACE CORPORATION, to specify ASTM A-648-73, which is not recognized nor sanctioned in AWWA C-301-72, and furthermore, the provided "Class IV" wire is not recognized nor sanctioned by ASTM A-648-73; by approving the use of 17-gauge cylinder steel instead of the specified 16-gauge cylinder steel; and by specifying only the absolute minimum standards and specifications, thereby permitting defective pipe to be made. Furthermore, the Defendant, CH2M HILL SOUTHEAST, INC., agreed to review all project documents submitted to the Plaintiff,

PINELLAS COUNTY, from the Defendant, INTERPACE CORPORATION, but subsequently failed to review such documents;

(D) Failed to specify, to perform, or to have performed, sufficient inspection and testing of materials used in the manufacture of the pipe to ensure the pipe would be manufactured and delivered as required by the specifications; failed to inquire of the Defendant, INTERPACE CORPORATION, of the use of admixtures that were used in the manufacture of the pipe, and by having no knowledge of the use of admixtures failed to approve, or to inspect the use of, admixtures; failed to require the Defendant, INTERPACE CORPORATION, to perform any additional tests not specifically mentioned in the standards and specifications, but necessary to ensure the quality and safety of the manufactured pipe; and failed to require that test results of the pipe manufacturing contractor and affidavits or certifications of compliance by the pipe manufacturing contractor be supplied for review as directed in the INTERPACE CORPORATION contract and AWWA specifications. As a result, materials were used in the manufacture of the pipe, and manufactured pipe was provided, which did not meet specification requirements;

(E) Certified completion of the project to the Plaintiff, PINELLAS COUNTY, without receiving affidavits and certifications of compliance. As a result of this negligence, the Plaintiff, PINELLAS COUNTY, was misled into believing that the pipeline was manufactured using materials and practices which complied in all respects with the standards and specifications;

(F) Failed to specify, to direct, to perform, or to have performed, adequate quality control tests on the manufactured pipe, which negligence included, but is not limited to, failure to detect that the pipe was being manufactured with materials which did not meet the design assumptions or the project specifications; failure to detect that the pipe was being manufactured with wire which contained serious seams and which was grossly susceptible to pitting, hydrogen embrittlement, and stress corrosion cracking as a result of defects formed during manufacture, that molds or forms were not correctly aligned during concrete pouring operations resulting in the cores of the pipes not meeting specified thicknesses, thereby causing stresses within the pipe greater than those for which it was designed, and failure to detect that the coating did not, in all cases, meet specified minimum thickness and composi-

tion requirements; failure to detect improper consolidation and non-uniformity of the coating; failure to detect that the mortar coating was being damaged and was separating during the manufacturing operation; failure to detect inadequate curing; failure to detect contamination of coating materials and precast cores; failure to detect defective coating patches; failure to detect insufficient core thicknesses and out-of-round steel cylinders; failure to detect improper cylinder welding procedures; failure to detect improperly stored corroded wire; failure to detect delaminated coating; failure to detect carbonation of the concrete cores, failure to detect non-uniform slurry application; and failure to detect that application of the cement slurry prior to the coating of the prestress wire was erratic, resulting in areas of unknown location throughout the pipeline which are highly susceptible to corrosion of the prestress wires and which have reduced safety factors, reduced durability, and which will ultimately lead to premature failure of the pipeline;

(G) Failed to provide proper inspection of the subject pipe during its production at the manufacturer's plant in Lacoochee and failed to detect the generally inadequate and negligent quality control situation at the pipe manufacturing plant. Furthermore, the Defendant, CH2M HILL SOUTHEAST, INC., failed to advise the Plaintiff, PINELLAS COUNTY, of the need for part-time or full-time in-plant inspections during the time the pipe was manufactured, and further failed to advise the Plaintiff, PINELLAS COUNTY, of the need to provide funds for these in-plant inspections;

(H) Failed to specify acceptance inspection procedures adequate to identify defective pipe. In addition thereto, the Defendant, CH2M HILL SOUTHEAST, INC., failed to inspect the work properly; failed to identify incorrect pipe loading and unloading techniques; failed to require the Defendant, INTERPACE CORPORATION, to provide samples and specimens of pipe manufacturing materials as provided for in the standards and specifications; failed to examine and test said material samples and specimens; and failed to require the Defendant, INTERPACE CORPORATION, to provide an affidavit and certification of compliance at the end of the project;

(I) Failed to require proper repairs to pipe damaged during transportation or installation;

(J) Failed to investigate "Class IV", 8-gauge wire

sufficiently before approving of such wire to be used in the manufacture of the subject pipeline; failed to review available test data for "Class IV", 8-gauge wire or to contact competent wire manufacturers; and failed in permitting the use of "Class IV", 8-gauge wire, failed to require said wire to undergo adequate testing, including torsion testing, hydrogen embrittlement testing, and stress corrosion cracking testing, before acceptance;

(K) Failed to detect that the pipe coating material was mortar rather than concrete as required in the specification;

(L) Failed in their design of the system to provide for sufficient flexibility which would allow the Plaintiff, PINELLAS COUNTY, to operate the subject pipeline in the future at working pressures up to 150 psi which may be needed for future water system operation;

(M) Failed to design the system to include a sufficient surge pressure margin or surge protection facilities adequate for the surges to which the pipeline is being, and will be, subjected during its operation;

(N) Failed to design the surge protection facilities properly which were provided. Specifically, of those air and vacuum valve assemblies which were specified and installed, the design was such that, when installed, many of the assemblies were flooded by groundwater and surface water. This rendered them unsuitable for the use intended, of mitigating surges and protecting the pipeline against water hammer damage. Furthermore, this endangered the health and safety of the Plaintiff's customers by exposing them to the probability that polluted water would be drawn into the potable water system and supplied to the Plaintiff's customers. As an additional result, the Plaintiff, PINELLAS COUNTY, suffered the added expense and inconvenience of redesigning and reinstalling said air and vacuum valves above ground so as not to be affected by the groundwater table and surface runoff waters;

(O) Failed to take into consideration and to design to prevent the probability that surges would be induced in the pipeline due to the operation and interaction between the Cypress Creek Pump Station, S.K. Keller Pump Station, and North Booster Station; all three stations, plus the interconnecting piping, having been designed by the Defendant, CH2M HILL SOUTHEAST, INC., prior to the design of the pipeline; failed to forewarn the Plaintiff, PINELLAS COUNTY, that the operation, or modifica-

tion to operation, of pumps; motors, drives, valves, actuators, and other appurtenances in the above-mentioned pump stations, when acting individually or together, could result in damaging surges being introduced into the pipeline; and failed to design, recommend, or advise as to the need for instrumentation to monitor for surges which could damage said pipeline, and which could be produced by the operation or interaction between these three pump stations;

(P) Failed in drafting the PINELLAS COUNTY/INTERPACE CORPORATION contract, which was ultimately signed, to require the Defendant, INTERPACE CORPORATION, to provide all test results as required to be performed under AWWA C-301-72; failed to require an affidavit and certification of compliance as provided for in AWWA C-301-72; failed to provide provisions in the contract that would give a sufficient warranty period by specifying only a one-year warranty period; and failed to provide a proper protection clause and recourse against the Defendant, INTERPACE CORPORATION, in the event that a defective product was supplied;

(Q) Failed to inform the Plaintiff, PINELLAS COUNTY, of its knowledge and understanding that the pipeline would only be expected to last approximately fifty years, while the Defendant, INTERPACE CORPORATION, consistently maintained the pipeline would last either indefinitely or at least one hundred (100) years;

(R) Failed to exercise due care in reviewing submittals from the Defendant, INTERPACE CORPORATION, which submittals described the prestressed concrete pressure pipe the Defendant, INTERPACE CORPORATION, intended to manufacture. By its failure to properly review these submittals, the Defendant, CH2M HILL, SOUTHEAST, INC., allowed the Defendant, INTERPACE CORPORATION, to manufacture a lesser quality pipe than was called for in the specifications. In so doing, the Defendant, CH2M HILL SOUTHEAST, INC., negligently failed to discharge its obligation to require the Defendant, INTERPACE CORPORATION, be held to the strict standards called for, and thereby failed to discharge its responsibility to the Plaintiff, PINELLAS COUNTY;

(S) Failed to reject shop drawings submitted by the pipe manufacturer, Defendant, INTERPACE CORPORATION,

which included the specification of ASTM 648-73 which in turn permitted, or in the alternative, is claimed to have permitted by Defendant, INTERPACE CORPORATION, the use of "Class IV" wire since the specification of ASTM 648-73 does not include within its specification an upper tensile limit for Class III wire. In turn, the Defendant engineer was permitting the use of a class of wire not provided in the original specifications and contracts and a class of wire which was totally different in kind than Class III wire, with a higher tensile strength than contemplated by the standard which sanctioned Class III wire; and

(T) Failed to require the Defendant, INTERPACE CORPORATION, to meet the requirements of the contract specifications contained in Plaintiff's Exhibit "A" and in Section 1.9 of AWWA C-301-72, requiring the provision of wire test specimens and other steel test specimens to the purchaser or its agent.

67. As a direct and proximate result of the negligence of the Defendant, CH2M HILL SOUTHEAST, INC., the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in Paragraph 14.

COUNT X
BREACH OF CONTRACT OF CH2M HILL SOUTHEAST, INC.

68. The Plaintiff, PINELLAS COUNTY, realleges and reavers Paragraphs 1 through 14, Count I, above.

69. The Plaintiff, PINELLAS COUNTY, realleges and reavers Paragraphs 64 through 67, inclusive, Count IX, above.

70. The Defendant, CH2M HILL SOUTHEAST, INC., breached its contract with the Plaintiff, PINELLAS COUNTY, in the manner described in Paragraph 66.

71. The Plaintiff, PINELLAS COUNTY, has performed all conditions precedent required under the contract, Plaintiff's Exhibit "B".

72. As a direct and proximate result of the breach of contract by the Defendant, CH2M HILL SOUTHEAST, INC., the Plaintiff, PINELLAS COUNTY, has been damaged in a sum in excess of Sixteen Million Dollars as more particularly described in Paragraph 14.

WHEREFORE, the Plaintiff, PINELLAS COUNTY, sues the Defendant, CH2M HILL SOUTHEAST, INC., for damages in a sum

in excess of Sixteen Million Dollars plus prejudgment interest and costs of this action.

JOHN T. ALLEN, JR., of
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273
Attorney for Plaintiff,
PINELLAS COUNTY
SPN00039379
Florida Bar #1284

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail hand-delivery to G. LEE GARRETT, JR., ESQUIRE, 3300 First Atlanta Tower, Atlanta, Georgia, 30383; by U.S. Mail to: / STEPHEN BULL, ESQUIRE, Suite 1200, 111 North Orange Avenue, Orlando, Florida, 32801; by hand-delivery to: JEFFREY S. O'BRIEN, ESQUIRE, P.O. Box 3542, St. Petersburg, Florida 33731; and /by U.S. Mail to: MICHAEL J. KEANE, ESQUIRE, P.O. Box 31687, St. Petersburg, Florida 33732-1687 this 25th day of May, 1988.

JOHN T. ALLEN, JR., of
JOHN T. ALLEN, JR., P.A.
4508 Central Avenue
St. Petersburg, FL 33711
(813) 321-3273
Attorney for Plaintiff/
PINELLAS COUNTY
SPN00039379
Florida Bar #1284

APPENDIX AA

Excerpts from Appellee's, CH2M Hill, Answer Brief

APPENDIX AA

Excerpts from Appellee's, CH2M Hill, Answer Brief

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PINELLAS COUNTY, Appellant,	)	
v.	)	CASE NO. 93-01203
CH2M HILL SOUTHEAST, INC., Appellee.	)	

APPELLEE'S ANSWER BRIEF

On Non-Final Appeal from the Sixth Judicial Circuit Court
in and for Pinellas County, Florida

Arthur J. England, Jr., Esq.
Florida Bar No. 022730
Charles M. Auslander, Esq.
Florida Bar No. 349747
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, PA
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Co-Counsel for CH2M Hill
Southeast, Inc.

Benjamin H. Hill, III, Esq.
Florida Bar No. 094585
Hill, Ward & Henderson
Barnett Plaza, Suite 3700
101 East Kennedy Boulevard
P.O. Box 2231
Tampa, Florida 33601
Telephone: (813) 221-3900
Co-Counsel for CH2M Hill
Southeast, Inc.

f. There can be no "due process" or "access to court" denial in rejecting the County's claims

The County argues in part that its constitutional right to due process, and its access to the courts, will be denied unless it can open up for retrial the multitude of matters which the court in *Hill I* foreclosed. The argument is emotional nonsense. No process or access rights have been impaired if the County had a trial and an appeal (which it did), and if the appellate court considered and rejected its contentions as legally improper (as it did). Access was fully availed of, 54 process was amply provided, 55 and the County simply did not prevail. The constitution does not guarantee a "win" to Pinellas County.56

---

54 The County had a year-long "day in court" on the issues it framed for trial.

55 The appellate process was more than ample, given the expanded briefing rights, massive appendices provided, and the lengthened oral argument times.

56 There is no lack of justice or process in denying the County a belated opportunity to replace its claims of tort breach with a new "contract" name. The County cannot have it both ways: first cloak all manner of breaches within two theories which lack factual and legal veracity, and then when unmasked cry "constitutional violation" in order to reintroduce them with a new *nom de plume*. *Company Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So.2d 561 (Fla. 1988).